

Court of Appeals Div. III No. 282481

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STATE COURT
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NO. 82399-5, 82400-2 (Consolidated)

SUPREME COURT OF THE STATE OF WASHINGTON

JACK FEIL and DELAPHINE FEIL, husband and wife; JOHN TONTZ
and WANDA TONTZ, husband and wife; and THE RIGHT TO FARM
ASSOCIATION OF BAKER FLATS,

Appellants,

v.

THE EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD, et al. (No. 82399-5),

and

DOUGLAS COUNTY; DOUGLAS COUNTY BOARD OF COUNTY
COMMISSIONERS; WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION; WASHINGTON STATE PARKS AND
RECREATION COMMISSION; and PUBLIC UTILITY DISTRICT
NO. 1 OF CHELAN COUNTY (No. 82400-2),

Respondents.

RESPONDENT STATE'S BRIEF

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I. INTRODUCTION

This case involves an application submitted by Washington State Parks and Recreation Commission (State Parks) to construct a public, non-motorized transportation and recreational project that will run along the Columbia River near Wenatchee from Odabashian Bridge north to Lincoln State Park. The project will run approximately 5.1 miles over two contiguous parcels of publicly owned land: one parcel owned by the Washington State Department of Transportation (WSDOT); the other parcel owned by a local public utility district. Most of the project is located within 200 to 400 feet of the river. It is intended, in part, to provide an alternative transportation route to Lincoln State Park for pedestrians and bicyclists, who might otherwise be forced to use State Route 2/97. It will also provide recreational access to the river consistent with the county shoreline master program.

The project will run through several land-use zones, including areas currently used to grow fruit trees on land leased from the two public entities mentioned above. State Parks examined two alternative courses from the existing proposal for the location of the project to minimize the impact on adjacent farmland: close to the highway, which would be dangerous to users of the trail, or closer to the river, which would provide recreational access to the river but also require purchasing private lands. Acquiring private

farmland for the project was considered not acceptable. State Parks chose to locate the project within the narrow corridor near the river owned by the public entities.

The Douglas County Board of County Commissioners (BOCC) unanimously approved the project location along the Columbia River as consistent with local law and good for the county. That decision was appealed to both the Eastern Washington Growth Management Hearings Board (EWGMHB) under the Growth Management Act (GMA) and the superior court under the Land Use Petition Act (LUPA). Both the EWGMHB and the superior court held that the recent decision in *Woods v. Kittitas Cy.*, 162 Wn.2d 597, 174 P.3d 25 (2007), controlled the jurisdictional issues. Both entities held that this application was a project permit under RCW 36.70B.020; thus, only the superior court had jurisdiction over the application. The EWGMHB dismissed the appeal for lack of jurisdiction. The superior court affirmed the BOCC under LUPA because there was substantial evidence supporting the decision.

Zoning laws are designed to give both government and the landowners predictability as to the use of land and a method to get permits for land use approved in a timely fashion. A county's adoption of a comprehensive plan and development regulations are subject to a 60-day

appeal period under the GMA. Appellants did not challenge the county comprehensive plan or zoning regulations.

Appellants are attempting now to challenge the county's approval of the project application as not in compliance with the GMA. Any such challenge is now time barred. The *Woods* decision established that a project permit, such as we have here, is reviewable only through a timely LUPA challenge in which it is tested for consistency with the governing comprehensive plan and development regulations, but not for compliance with the GMA.

There is no need for this Court to revisit that issue here, which was settled in *Woods*. It should transfer the matter to the court of appeals to be decided consistent with the Court's direction in *Woods*. The court of appeals should, in turn, affirm both the EWGMHB decision dismissing the GMA appeal because it lacked jurisdiction, and the superior court because substantial evidence supports the county's decision.

II. ISSUES

A. Did the EWGMHB and superior court properly conclude that the proposed project is a project permit as defined under RCW 36.70B.020 when the project involves a recreational use authorized by a zoning ordinance adopted pursuant to the GMA, and the project affects specific contiguous parcels of land? (Appellants' Issues Nos. 1 and 2.)

B. Did the superior court properly conclude that the proposed project is a site-specific rezone authorized in the comprehensive plan when the plan specifically refers to the extension of the trail project, and the plan identifies the general location of the trail project in a map? (Appellants' Issues Nos. 3, 4, 5, 6, 7, and 8.)

C. Did the superior court properly conclude that substantial evidence supports the BOCC's decision to approve the project after reviewing over 6,000 pages of record and holding a hearing on the matter? (Appellants' Issue No. 12.)

D. Did the superior court properly conclude that the project complied with the county zoning laws when the project met the required development standards, the underlying landowner supported the project, the final project deviated from the width included in the application because the county imposed additional protective buffers, and the county commissioners' decision was amply supported by the record? (Appellants' Issue No. 10.)

E. Did the superior court properly conclude that the BOCC action did not violate article XI, section 11 of the Washington Constitution when the project was authorized by zoning ordinance and the comprehensive plan and recreational overlay ordinance had not been appealed within the 60-day timeframe set forth in the GMA? (Appellants' Issue No. 11.)

F. Did the superior court properly conclude that the county need not further review the project under SEPA where the project was previously evaluated under NEPA/SEPA, the SEPA analysis was subsequently affirmed by the superior court, the superior court decision was not appealed, and the project has not changed since the first NEPA/SEPA analysis? (Appellants' Issue No. 9.)

III. STATEMENT OF CASE

This matter involves an application submitted by State Parks to construct a public, non-motorized transportation and recreational project that will run along the Columbia River from Odabashian Bridge north to Lincoln State Park. Administrative Record (AR), Vol. 35, 1-6671. The project will run approximately 5.1 miles over a narrow corridor of publicly owned land, most of which is within 200 to 400 feet of the river. AR Vol. 35, 1-6657, 1-6671. It is intended, in part, to provide an alternative transportation route to Lincoln State Park for pedestrians and bicyclists, who might otherwise be forced to use State Route 2/97. AR Vol. 25, 0-4729 to 4731. This project also will provide recreational access to the river consistent with the county shoreline master program. AR Vol. 23, 0-4309. It runs through several land-use zones, including areas currently used to grow fruit trees on land leased from public entities. AR Vol. 35, 1-6657.

This project has had a long procedural history. In 2004, the hearing examiner approved a shoreline substantial development permit for this project. AR Vol. 35, 1-6671. The State Shorelines Hearings Board affirmed that decision. AR Vol. 35, 1-6671. The superior court affirmed the decision on the substantial development permit but directed State Parks to apply for a land-use permit as well. AR Vol. 35, 1-6672.

State Parks complied with that direction and applied for a recreational overlay permit in 2006. AR Vol. 35, 1-6672. The hearing examiner approved the project after a hearing. AR Vol. 35, 1-6673. The hearing examiner's decision was appealed, and the superior court remanded the matter to be decided by the Board of County Commissioners stating that decision could not be delegated to a hearing examiner. AR Vol. 40, 1-7603 to 7608.

During the course of this process, county staff analyzed the project for consistency with county law twice. AR Vol. 23, 0-4307, AR Vol. 35, 1-6656. Staff examined the various development standards and performance standards. Douglas County Code (DCC) 18.46.070 imposes certain development standards: buffering, outdoor light, off-street parking, access, refuse collection, signs, fire safety, emergency assistance, provision for public health, and restrictions on sound amplification. Staff

found that buffering would be required in the form of set backs, fences where appropriate, and trees to prevent spray drift.

Staff determined that the requirements for parking, access, refuse, and water were satisfied by the proximity of the trail to Lincoln Rock State Park. AR Vol. 35, 1-6664. The project also included an emergency response and fire safety plan. AR Vol. 35, 1-6664. Ultimately, staff recommended approval with conditions such as buffers, fencing, security, and intermittent trail closure to minimize the impact to adjacent agriculture lands. AR Vol. 35, 1-6666 to 6669.

The traffic benefits were discussed at length. The project would remove pedestrian and bicycle traffic from the five-mile section of Highway 2/97. AR Vol. 25, 0-4729 to 4731.

A consultant for State Parks addressed compatibility of the project with adjacent agricultural use. AR Vol. 35, 1-6701. The consultant's report acknowledged that DCC 18.16 discouraged pedestrian/bike trails in areas designated as agricultural lands, but the report then analyzed the projected impact of the project. The project would convert only 24 acres of orchards on leased public land. AR Vol. 35, 1-6701. With buffers, fencing, and controls on opening and closing times, the impact on adjacent agricultural uses could be lessened. AR Vol. 35, 1-6702. The impact to bee activity was thoroughly discussed and addressed through closures.

AR Vol. 36, 1-6802 to 6804. Vandalism was discussed and addressed with signage and patrols. AR Vol. 36, 1-6804 to 6805. Impacts on helicopter spraying were discussed and addressed through temporary closures. AR Vol. 36, 1-6806. Frost pockets were discussed and addressed by landscape design. AR Vol. 36, 1-6810. County staff summarized the various concerns and mitigation measures to address those concerns. AR Vol. 36, 1-6812.

Over 1,500 people signed petitions submitted to the BOCC supporting the project. AR Vol. 32, 0-6078 to Vol. 33, 0-6282. The BOCC held a lengthy public hearing on February 25, 2008. AR Vol. 30, 0-5773. After a month of deliberation, the BOCC unanimously approved the project.

Appellants appealed that decision to both the Eastern Washington Growth Management Hearings Board (EWGMHB) under the GMA process and the superior court under the Land Use Petition Act. The EWGMHB held that the project was a project permit as defined under RCW 36.70B.020 and thus outside the jurisdiction of the EWGMHB. The superior court also held that the project was a project permit and affirmed the county decision after reviewing the petition under the standards set forth in LUPA. Both decisions were appealed and are consolidated in this Court.

IV. ARGUMENT

A. This Recreational Overlay Project Is a Project Permit under RCW 36.70B.020 and Is Not Subject to Review under the Growth Management Act.

This Court has already held that a project permit as defined under RCW 36.70B.020 is not subject to review for consistency with the Growth Management Act, and that the growth management hearings board does not have jurisdiction to review it. *Woods v. Kittitas Cy.*, 162 Wn.2d 597, 610, 174 P.3d 25 (2007). As a project permit, it is reviewable only by a superior court applying the standards set forth in the Land Use Petition Act. *Id.* at 610.

We affirm the Court of Appeals and hold that the superior court lacks subject matter jurisdiction under LUPA to decide whether a site-specific land use decision complies with the GMA. The superior court may decide only whether a site-specific land use decision complies with a comprehensive plan and/or development regulation.

Id. at 603.

Both the EWGMHB and the superior court correctly ruled that the project was a project permit as defined under RCW 36.70B.020. Because this project meets the definition of a project permit, this Court should reject Appellants' argument that the project be analyzed for consistency with the GMA and affirm the decision of the EWGMHB to dismiss for lack of jurisdiction.

1. This project meets the definition of a project permit under RCW 36.70B.020.

The project application meets the definition of a project permit application because it is an application for a specific project for a specific use by a specific applicant that is authorized by existing zoning laws. RCW 36.70B.020(4); *Woods*, 162 Wn.2d at 613. The construction of a statute is a question of law reviewable de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 43 P.3d 4 (2002). On mixed questions of law and fact, the court determines the law independently, then applies the law to the facts as found by the agency. *Id.* Substantial weight is accorded to a growth management hearings board's interpretation of the GMA, but the court is not bound by the board's interpretation. *Thurston Cy. v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008). Both the EWGMHB and the superior court held that this application was a project permit as defined under RCW 36.70B.020.

The definition of project permit (or project permit application) under RCW 36.70B.020 is as follows:

(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, *site-specific rezones authorized by a comprehensive plan or*

subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection. (Emphasis added.)

The definition of project permit focuses not on the adoption of comprehensive plans and development regulations, but on the subsequent act of submitting specific applications for approval under those plans and regulations. If an existing zoning law authorizes the use but requires the county to approve the project to ensure that the project complies with the various standards set forth in the zoning code, the project is a project permit under RCW 36.70B.020. This project application was submitted pursuant to existing zoning regulations that authorize recreational overlays. DCC 18.46.

The purpose of the R-O recreational overlay district is to provide for the continuance of public and private parks and other outdoor recreational facilities in order to encourage the development of additional active recreational facilities in Douglas County, and to maintain adequate buffers between recreational developments and surrounding land uses.
DCC 18.46.010.

The application is for a project permit authorized by the above regulation. Note that DCC 18.46.010 creates an overlay district; it does not change the underlying zoning. The regulation allows additional recreational activities within other existing zoning classifications. If this project is not built, the underlying zoning is still in effect. The county's obligation in

reviewing this application is to ensure the project meets the standards set out in DCC 18.46.

The EWGMHB and superior court both concluded that the project application in this case is a project permit application under RCW 36.70B.020. Their conclusion is consistent with this Court's ruling in *Woods*, 612 Wn.2d at 610-12, which affirms and clarifies the holding in *Wenatchee Sportsmen Ass'n v. Chelan Cy.*, 141 Wn.2d 169, 179, 4 P.3d 123 (2000). In *Wenatchee Sportsmen*, the Court explained the difference between a development regulation, which is challenged to a growth management hearings board, and a project permit application, which is challenged in superior court.

The GMA defines what a "development regulation" is and, more helpfully, what it is not: "A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city." RCW 36.70A.030(7). The local project review statute defines "project permit application" as including, among other things, "site-specific rezones authorized by a comprehensive plan or subarea plan." RCW 36.70B.020(4). The items listed under "project permit application" are specific permits or licenses; more general decisions such as the adoption of a comprehensive plan or subarea plan are not approvals of project permit applications. RCW 36.70B.020. The conclusion to be drawn from these provisions is that a site-specific rezone is not a development regulation under the GMA, and hence pursuant to RCW 36.70A.280 and .290, a GMHB does not have jurisdiction to hear a petition that does not involve a

comprehensive plan or development regulation under the GMA.

Wenatchee Sportsmen, 141 Wn.2d at 178.

The size of this project does not change the analysis. Appellants argue that the project could not be characterized as a project permit because the project will cover 5.1 miles. While the project will run 5.1 miles, it affects only 24 acres of land currently leased from two governmental entities. AR Vol. 35, 1-6701. Courts have found much larger projects to be site-specific land-use decisions. For example, in *Woods* the site-specific rezone consisted of 252 acres. *Woods* at 28. In *Wenatchee Sportsmen*, the site-specific rezone consisted of over 350 acres of land. *Wenatchee Sportsmen* at 174.

The applications at issue in *Woods* and *Wenatchee Sportsmen* were large enough to have required a mapping change, but in both cases the Court found they were applications for site-specific rezones that are reviewed under LUPA. Contrary to Appellants' suggestion, a project approval is not converted into an amendment to the comprehensive plan or development regulation just because it results in a change to the land-use map. The administrative function of remapping the site did not affect the analysis of the Court.

Similarly, nothing in the definition of project permit in RCW 36.70B.020 or the local zoning code requires that an application for a recreational overlay district be limited to a single owner. In this case, this narrow corridor is owned by only two governmental entities. This Court should not read into RCW 36.70B.020 or the local code what the Legislature and local government did not intend. *Yousoufian v. Office of King Cy. Exec.*, 152 Wn.2d 421, 437, 98 P.3d 463 (2004).

2. The project application asks for a recreational overlay.

Appellants argue that this project requires an amendment to the county comprehensive plan or development regulations. The State will address those arguments in the next subsections, but it might be helpful to first understand what this land-use proposal actually does under the county zoning code. Recreational trails are deemed a use permitted outright in the recreational overlay code. DCC 18.46.040J. Such overlays are considered a site-specific project map designation on individual property or a group of properties. DCC 18.12.060. This overlay district allows uses that differ from the specific provisions within an applicable zoning district. DCC 18.12.060. In essence, this district overlay augments the uses otherwise allowed in a zoning district. The overlay does not change the underlying zoning. The overlays are authorized in all zones unless expressly prohibited. DCC 18.46.020.

This project will run through the Tourist Recreation Commercial Zone, Low-Residential Zone, Commercial Agriculture 5 Zone, and Commercial Agriculture 10 Zone. AR Vol. 35, 1-6657. None of the zones through which this project will run prohibit such an overlay. AR Vol. 35, 1-6657. Specifically, a recreational overlay is not a listed prohibited use in the commercial agriculture zones. DCC 18.34.050, 18.36.050; AR Vol. 35, 1-6657. In summary, the existing zoning districts affected by this project will continue with their current zoning designation but will now have a narrow overlay area in which recreational use is permitted. Should this project not be funded, the underlying zones would not need to be rezoned.

3. This project does not amend a comprehensive plan.

Appellants try to distinguish *Woods* by claiming that this project actually amends the comprehensive plan or a development regulation enacted under the GMA. Appellants argue that it is *evident* that the DCC requires all rezones to be approved as an amendment to the comprehensive plan. Brief of Appellant (BA) at 26-27. They cite to no part of the code that sustains the argument. In approving this project, the BOCC did not approve an ordinance of general applicability under the GMA. To the contrary, this project involved a quasi-judicial act by the county that was

subject to review by the hearings examiner,¹ and, by order of the superior court, the Board of County Commissioners.

No amendments to zoning texts were required or requested. Although the superior court remanded this project to the BOCC for final approval based on *Lutz v. City of Longview*, 83 Wn.2d 566, 520 P.2d 1374 (1974),² that remand did not change the character of the project from a site-specific project processed under DCC 18.46 (and the hearing examiner process identified in DCC 2.13) to an amendment of general applicability. The DCC did not require recreational overlays to be approved as amendments to the comprehensive plan.

4. This project does not amend a development regulation.

Nor did the BOCC decision amend a development regulation. A development regulation is defined in the GMA as follows:

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to

¹ The county code specifically assigns applications to establish a recreational overlay to the hearing examiner. DCC 2.13.070A(9). AR Vol. 21, 0-3916.

² Significantly, *Lutz* involved approval of a planned unit development. The Legislature subsequently enacted RCW 36.70B.020 in which it defined a planned unit development to be a project permit. This definition makes such permits site-specific actions within the jurisdiction of LUPA. Such permits are not GMA legislative action of general applicability. *Woods*, 162 Wn.2d at 603.

approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

RCW 36.70A.030.

The Douglas County land-use regulations set forth the development standards and criteria that will control subsequent applications for land use in various zoning classifications. Those regulations were adopted in compliance with the GMA.

If this Court were to construe the BOCC's approval of this project as the Appellants request, then an application for a specific subdivision, planned unit development, or binding site plan would qualify as a development regulation that must be analyzed for consistency with the GMA every time such an application was submitted. Such a framework for approving permits would frustrate the basic goals of predictability in land use and timeliness in approving permits. *See Deschenes v. King Cy.*, 83 Wn.2d 714, 717, 521 P.2d 1181 (1974); *see also City of Federal Way v. King Cy.*, 62 Wn. App. 530, 538, 815 P.2d 790 (1991) (the consistent policy in this state is to review decisions affecting use of land expeditiously so that legal uncertainties can be promptly resolved and land development not necessarily slowed or defeated by litigation-based delays).

If the application for a project is authorized by a comprehensive plan and a specific zoning regulation adopted pursuant to the GMA, the application is a project permit application reviewed only for consistency with the applicable comprehensive plan and/or zoning regulation under LUPA.

5. The project should not be reviewed for consistency with the GMA.

Despite the *Woods* decision, which held that a project permit is not reviewed for consistency with the GMA, Appellants nonetheless urge this Court to review this project for compliance with the Growth Management Act in light of the principles announced in *King Cy. v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 14 P.3d 133 (2000), and *Lewis Cy. v. Western Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 509 P.3d 1096 (2006).

This Court should reject this invitation because both of these cases involved comprehensive plan provisions or development regulations adopted under the GMA, challenged within the 60-day time limit established in RCW 36.70A.290, and allegations of specific noncompliance with the GMA. By contrast, the Appellants here are challenging a project permit application, which is reviewed under LUPA only for compliance with already adopted comprehensive plan provisions and development regulations. LUPA cannot be used to collaterally appeal comprehensive plan

provisions and development regulations after the 60-day window has expired. *Woods*, 162 Wn.2d at 611, 614.

The Legislature imposed specific, tight windows by which a party could challenge land-use regulations under both the GMA (60 days) and permit decisions under LUPA (21 days). These appeal periods were kept short to provide certainty to land-use projects. See *Deschenes v. King Cy.*, 83 Wn.2d at 717; see also *City of Federal Way v. King Cy.*, 62 Wn. App. at 538. Absent such limitation periods or the exclusive jurisdictional limits, projects and regulations potentially could be subject to endless collateral attack. Appellants had ample opportunity to test this comprehensive plan and zoning laws for compliance with the GMA; they chose not to do so, and they should not now be allowed to do so collaterally.

Appellants argue that their challenge to the comprehensive plan and development regulations could not be brought within 60 days of adoption under the GMA because they allege they did not know where this specific trail would go. If this were the standard, the 60-day limitation period within the GMA would be meaningless. Under Appellants' proposed standard, anyone could challenge a subsequent project for consistency with a comprehensive plan or regulation well after the 60-day limitation period by alleging the comprehensive plan did not expressly describe the location of a

subdivision, planned unit development, binding site plan, or site-specific rezone.

A comprehensive plan is a “guide” or “blueprint” to be used in making land-use decisions; its function is not to enumerate specific projects. *See Woods*, 162 Wn.2d at 613. The standard Appellants propose would frustrate the purpose of the GMA to give flexible standards to guide subsequent land use. For these reasons, project permits cannot be challenged for compliance with the GMA; a superior court has jurisdiction under LUPA only to determine whether it complies with the county’s comprehensive plan and/or development regulations. *Woods*, 162 Wn.2d at 625. Correspondingly, a growth management hearings board does not have jurisdiction to hear a petition alleging that a project permit violates the GMA. *Woods* at 612. The EWGMHB decision dismissing the GMA appeal should be affirmed.

B. The Project Is Consistent with the Applicable Comprehensive Plans.

Appellants ask the Court to decide if the project must be both site-specific and authorized by the comprehensive plan. The answer is yes. The definition of project permit seems clear on this point. Having demonstrated that this project is site-specific, we will demonstrate that the project is also authorized by the comprehensive plan.

The policies of three comprehensive plans affecting this area authorize this project. AR Vol. 23, 0-4325. More specifically, the subarea plan for the greater East Wenatchee area encouraged development of the project: "The current trail system should be increased to extend north to connect with Lincoln Rock State Park." AR Vol. 21, 0-3811. The trail location was identified in a map as early as the 1988 comprehensive plan. Clerk's Papers (CP) Vol. 40A, 0-7674 (VT at 25 ll. 17-21). The location of the proposed trail was marked with a dotted line. AR Vol. 20, 0-3735. It ran along the river (*see insert on map, AR Vol. 20, 0-3735*).

The staff report addressed the relevant comprehensive plan policies and found that the project was consistent with those policies. AR Vol. 35, 1-6658 to 6661; 6662 to 6663. The report acknowledges that the agricultural policies require protection of agricultural lands from conflicting uses. The report also acknowledges that the Greater East Wenatchee Area Comprehensive Plan specifically identified this project for completion. The report indicates that the various conditions imposed on the project served to minimize conflicting uses while meeting the comprehensive plan direction to complete this project. AR Vol. 35, 1-6663.

Notwithstanding express mention of the trail in the Greater East Wenatchee Area Comprehensive Plan, Appellants argue that the project was not expressly authorized by the plan and that such authorization cannot be

implied. This Court has held that, absent a specific requirement of the comprehensive plan to the contrary, site-specific rezones need only be consistent with the comprehensive plan to meet the definition of a project permit under RCW 36.70B.020. *Woods*, 162 Wn.2d at 616; *Wenatchee Sportsmen Ass'n v. Chelan Cy.*, 141 Wn.2d at 179. Once a comprehensive plan and zoning regulations are approved, subsequent site-specific land-use decisions by a local jurisdiction must be *generally consistent* with the comprehensive plan. *Woods*, 162 Wn.2d at 616.

As a result, any subsequent land-use decision involving site-specific applications of existing zoning laws, as is the case here, would qualify as a project permit if the action is consistent with the zoning laws and general policies of the comprehensive plan.

C. The BOCC Decision to Approve the Project Is Supported by Substantial Evidence.

Having demonstrated that this project does not amend the comprehensive plan or zoning regulations under the GMA, the remainder of this brief will focus on the applicable LUPA standards of review. A party seeking relief under LUPA carries the burden of meeting the standards in RCW 36.70C.130(1). *Lakeside Industries v. Thurston Cy.*, 119 Wn. App. 886, 894, 83 P.3d 433, *as amended, review denied*, 152 Wn.2d 1015 (2004).

Under the “substantial evidence” standard, a land-use decision will be upheld if supported by “evidence that is substantial when viewed in light of the whole record before the court.” RCW 36.70C.130(1)(c). “Substantial evidence” has been defined as evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *See, e.g., Heinmiller v. Dep’t of Health*, 127 Wn.2d 595, 903 P.2d 433 (1995), *cert. denied*, 518 U.S. 1006, 116 S. Ct. 2526, 135 L. Ed. 2d 1051 (1996); *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 869 P.2d 1045 (1994).

The substantial evidence standard is “highly deferential” to the agency fact finder. *ARCO Prods. Co. v. Wash. Utils. & Transp. Comm’n*, 125 Wn.2d 805, 812, 888 P.2d 728 (1995). The court will view the evidence in the light most favorable to the party who prevailed in the highest administrative forum to exercise fact-finding authority—in this case State Parks. *City of University Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001). The court will accept the fact finder’s determinations of witness credibility and the weight to be given to reasonable but competing inferences. *Id.*

In summary, the court is to review the whole record and if there are sufficient facts in that record from which a reasonable person could make the same finding as the agency, the agency’s finding should be upheld. This is so even if the reviewing court would make a different finding from

its reading of the record. *Callegod v. Washington State Patrol*, 84 Wn. App. 663, 929 P.2d 510, *review denied*, 132 Wn.2d 1004 (1997).

1. The county staff report analyzed the impacts, conditions, and consistency of the project with the county code.

Most of the project falls within 200-400 feet of the river. AR Vol. 35, 1-6657. Early in the process of approving a shoreline substantial development permit for this project, the staff examined the various planning policies adopted under the Shoreline Management Act, which fostered the goal of providing access to the river. AR Vol. 23, 0-4309. Specifically, under the Shoreline Master Program, links between shoreline parks and public access points should be encouraged. AR Vol. 23, 0-4309. Furthermore, the county's Shoreline Design Area Plan specifically references this proposed project. AR Vol. 23, 0-4316. That plan discusses the impacts of trail development adjacent to agricultural lands and sets forth appropriate conditions such as buffers. AR Vol. 23, 0-4318. Proposed setbacks for this project exceeded what was required under the shoreline plan. AR Vol. 23, 0-4323. The Shoreline Master Program did not treat agriculture as having any priority over other authorized uses within this shoreline area. AR Vol. 18, 0-3330 (VT at 336, ll. 12-17).

Staff examined the various development standards and performance standards. DCC 18.46.070 imposes certain development standards: buffering, outdoor light, off-street parking, access, refuse collection, signs, fire safety, emergency assistance, provision for public health, and restrictions on sound amplification. Appellants allege that the buffer standards were not met as required under DCC 18.46.070A. DCC 18.46.070A focuses on adequate buffering to provide screening, noise control, safety, and light control. This project is a low-impact recreational trail, not a ball field with large crowds and bright lights. Staff found that buffering would be required in the form of set backs, fences where appropriate, and trees to prevent spray drift. Plantings and fences are two of the buffer mechanisms allowed under the development standards. DCC 18.46.070A required no more than specified by the BOCC.

Staff also determined that the requirements for parking, access, refuse, and water were satisfied by the proximity of the trail to Lincoln Rock State Park. AR Vol. 35, 1-6664. The project also included an emergency response and fire safety plan. AR Vol. 35, 1-6664. Performance standards were addressed through buffering or deemed to be temporary related to construction (noise, dust, etc.). AR Vol. 35, 1-6707 to 6709. Ultimately, staff recommended approval with conditions such as

buffers, fencing, security, and closure to minimize the impact to adjacent agriculture lands. AR Vol. 35, 1-6666 to 6669.

The traffic benefits were discussed at length. The project would remove pedestrian and bicycle traffic from the five-mile section of Highway 2/97. AR Vol. 25, 0-4729 to 4731.

A consultant for State Parks analyzed compatibility of the project with adjacent agricultural use. AR Vol. 35, 1-6701. The consultant acknowledged that pedestrian/bike trails were discouraged in areas designated as agricultural lands. The consultant then analyzed the actual impact. The project would only convert approximately 24 acres of orchard land that existed on leased public land. AR Vol. 35, 1-6701. With buffers, fencing, and controls on opening and closing times, the impact could be lessened. AR Vol. 35, 1-6702. The impact to bee activity was thoroughly discussed and addressed through closures. AR Vol. 36, 1-6802 to 6804. Vandalism was discussed and addressed with signage and patrols. AR Vol. 36, 1-6804 to 6805. Impacts on helicopter spraying were discussed and addressed through temporary closures. AR Vol. 36, 1-6806. Frost pockets were discussed and addressed by landscape design. AR Vol. 36, 1-6810. County staff then summarized the various concerns and mitigation measures to address those concerns. AR Vol. 36, 1-6812.

2. Ample testimony rebutted the opposing concerns.

Opponents presented contradictory views of the impacts of the project, but those views were rebutted with testimony or citations to various documents. AR Vol. 20, 0-3731 to 3733; AR Vol. 36, 1-006801 to 006815. Jack Feil, an Appellant in this case, indicated that buffering may be adequate to address existing chemical spray concerns. CP Vol. 40A, 0-7699 (VT 2-25-08 at 50, ll. 22-25). Mr. Feil focused his concern about buffering and spray drift more on hypothetical changes in toxicity findings or introduction of new chemicals in the future. *Id.* A former orchardist in favor of the trail testified that the trend is really to convert from more toxic chemicals to safer pesticides. CP Vol. 40A, 0-7735 (VT 2-25-08 at 86, ll. 16-19). He further testified that newer sprayers can be calibrated to reduce spray drift. *Id.* at 86, ll. 20-25.

Concerns about spray drift, vandalism, and rapes had been raised when the trail south of the bridge (Loop Trail) was built many years ago. CP Vol. 40A, 0-7705 (VT 2-25-08 at 56). Three orchards abut that trail. *Id.* Experience has shown that the concerns never became problems. *Id.* (VT 2-25-08 at 56, ll. 6-14). Another former orchardist, who had farmed for 17 years, indicated that he never had a problem with spray drift even though a county road was only 12 feet from his orchard. CP Vol. 40A, 0-7747) (VT 2-25-08 at 98, ll. 10-15). Yet another person, who works for

the fruit industry in Baker Flats, indicated that he and coworkers jog and bicycle near Baker Flats, and they have not had any negative encounters with spray or bees. CP Vol. 40A, 0-7764 (VT 2-25-08 at 100, ll. 1-12).

There were concerns about the ability to acquire insurance to cover the risk associated with spray. One person testified that he contacted Safeco Insurance about the matter and was told that the insurers write farm insurance policies despite spray drift: "It's not a big deal now." CP Vol. 40A, 0-7764 (VT 2-25-08 at 115, ll. 1-3).

There is substantial evidence in the record demonstrating that this project was thoroughly studied and all aspects—including those raised by Appellants—were considered and addressed by the county prior to approving this project.

D. The Project Met the Requirements of the Zoning Regulations.

Appellants raise a number of issues relating to what they perceive as violations of the zoning regulations. Courts give substantial deference to both the legal and factual determinations made by local jurisdictions with expertise in land-use regulation. *Timberlake Christian Fellowship v. King Cy.*, 114 Wn. App. 174, 180, 61 P.3d 332, *review denied*, 149 Wn.2d 1013 (2002). This deference was further noted by the Supreme Court when it stated: "[l]ocal jurisdictions with expertise in land use decisions are afforded an appropriate level of deference in interpretations of law

under the Land Use Petition Act (LUPA).” *Habitat Watch v. Skagit Cy.*, 155 Wn.2d 397, 120 P.3d 56 (2005).

1. The project complies with development standards.

DCC 18.46 is a development regulation. DCC 18.46.070 imposes certain development standards. The county’s compliance with those development standards was addressed at length in Section C-1 of this brief and will not be repeated here.

2. The project complies with the signature requirement of DCC 14.06.010B7.

Appellants allege that the project violates the county regulations because the landowner, the WSDOT, did not sign the actual application. Instead, the WSDOT sent a letter to the county indicating that it was aware of the project and gave its support. DCC 14.06.010B7 reads as follows:

Each adopted application form shall, at a minimum, include the following: . . .

G. The signatures of each applicant or the applicant’s representative, and each property owner if different than the applicant(s); . . .

AR Vol. 21, 0-3921.

Appellants place too technical a reading on this requirement. By focusing on the technical, they miss the point of the requirement. According to the county, the purpose of the owner’s signature requirement was to make sure that the owner was aware of the proposed change in use for the property. AR Vol. 23, 0-4392. That requirement was met. By

separate letter, the WSDOT advised the county that WSDOT authorized State Parks to make the application. AR Vol. 23, 0-4393.

Where compliance with a particular procedure would be unduly technical and stringent as well as duplicative in nature, substantial compliance is generally all that is required. *See, e.g., Shelton v. City of Bellevue*, 73 Wn.2d 28, 40, 435 P.2d 949 (1968) (substantial compliance is all that is required when city is acting on proposal involving exercise of discretion under zoning regulations rather than enacting zoning regulations that impose restrictions). The signature requirement in this case affects only the ability of the county to proceed with its discretionary function. The procedure was substantially met.

3. The site plan was consistent with the RO application.

Appellants allege that the BOCC approved a site plan that exceeded the trail size requested by State Parks (5.1 miles by 20 feet wide) because the project as approved included buffers along the 20-foot-wide trail. The buffers were imposed as a condition of the approval based on the requirements of DCC 18.46.070. When the county imposes conditions on an applicant pursuant to code, such conditions do not void the original application. To construe this provision as Appellants suggest would mean that applicants would have to re-apply anytime the county imposed a condition to ensure compliance with the zoning standards.

The application puts the county on notice of what is requested by the applicant. The conditions imposed by the county are within the county's control. The final approval addresses both the original application request and necessary or appropriate conditions. This system is efficient and consistent with the requirements of RCW 36.70B.070 (an application is complete if the application is sufficient for continued processing even though additional information may be required.)

4. The final decision of the BOCC was proper.

Appellants allege that the Board of County Commissioners' findings were inadequate, inconsistent, or speculative, in part, because they relied on findings made by the hearing examiner. Appellants claim that the hearing examiner's findings were inadequate to meet with requirements of RCW 36.70A.177. BA. at 44. As demonstrated previously, compliance with the GMA, and specifically RCW 36.70A.177, is not the standard here.

After the superior court remanded the hearing examiner's decision for final action by the BOCC, the board held its own hearing and issued its decision adopting certain findings and incorporating prior findings by the hearing examiner.³ Contrary to Appellants' argument, the superior court

³ The BOCC was free to incorporate whatever findings the BOCC felt were appropriate. *West Slope Cmty. Coun. v. City of Tacoma*, 18 Wn. App. 328, 338, 569 P.2d 1183 (1977).

did not reject the hearing examiner's findings. The superior court only held that the final decision must be made by the Board of County Commissioners. AR Vol. 40, 1-7603 to 7608.

The Board of County Commissioners was under no obligation to do more. In *State ex rel. Morrison v. City of Seattle*, 6 Wn. App. 181, 191, 492 P.2d 1078 (1971), review denied, 80 Wn.2d 1007 (1972), the court held that absent an express requirement in the city code to the contrary, there was no requirement of a written document to lay out specific findings by the city council.

In *State ex rel. Morrison*, Safeway applied for a conditional use permit. The permit was denied by the board of adjustment. Safeway appealed to the city council, which granted the application. Appellants challenged the city council's power to make the ultimate decision without specific findings of fact. The court quoted *State ex rel. Smilanich v. McCollum*, 62 Wn.2d 602, 607, 384 P.2d 358 (1963), for the rule that the word "findings" means nothing more than administrative determinations.

When the council acted to grant Safeway's applications, it determined that the "facts" necessary to the grant were present. The record itself is available to review whether or not such determinations had a factual basis. Findings of fact on permits, license, or so forth would constitute an onerous burden upon already overburdened city councils.

State ex rel. Morrison v. City of Seattle, 6 Wn. App. at 191. The court held for the city.

The BOCC decision is amply supported by the record as demonstrated in Section C of this brief.

E. The County Zoning Code Does Not Violate Article XI.

Appellants allege that the county's comprehensive plan and zoning regulation that authorizes recreational overlays (DCC 18.46) violated article XI, section 11 of the Washington Constitution. Article XI, section 11 reads as follows: "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with the general laws." Article XI is a broad grant of authority to the county. Local laws are presumed constitutional, and a petitioner has a heavy burden of proving invalidity beyond a reasonable doubt. *City of Bellevue v. State*, 92 Wn.2d 717, 720, 600 P.2d 1268 (1979). Whether a local law conflicts with a general law is purely a question of law to be reviewed de novo. *Weden v. San Juan Cy.*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998).

The crux of Appellants' argument is that the recreational overlay regulation conflicts with requirements of the Growth Management Act. A law is unconstitutional if the general law "preempts the field, leaving no room for concurrent jurisdiction," or "if a conflict exists such that the two

[laws] cannot be harmonized.” *Weden*, 135 Wn.2d at 693. Two laws will not conflict unless the local law permits what is forbidden by state law or prohibits what state law permits. *Parkland Light & Water Co. v. Tacoma-Pierce Cy. Bd. of Health*, 151 Wn.2d 428, 433, 90 P.3d 37 (2004).

There is no conflict between this county’s recreational overlay regulation and any general law. First, under the Growth Management Act, local laws adopted under the Act are valid if not appealed within 60 days. RCW 36.70A.290, .320; *Wenatchee Sportsmen Ass’n*, 141 Wn.2d at 182; *see also Woods*, 162 Wn.2d at 614. Appellants never challenged RCW 18.46 under the 60-day timeframe; that regulation is valid under the GMA. Second, the GMA does not directly apply to site-specific projects. *Woods*, 162 Wn.2d at 614. Because the GMA does not apply to site-specific projects, there can be no conflict. Where two interpretations are possible, the interpretation that sustains the constitutionality of the law will be adopted. *City of Spokane v. Vaux*, 83 Wn.2d 126, 129-30, 516 P.2d 209 (1973).

Appellants are attempting with this argument to achieve a disguised challenge to the adequacy of the comprehensive plan and validly adopted ordinances long after the 60-day appeal window has expired. This is exactly what the Court in *Woods* held was not permissible.

F. The Project Complies with SEPA.

Appellants claim that State Parks did not satisfy its SEPA obligations. Appellants have made these claims before, and the claims were twice rejected—both before the superior court in the first LUPA action, *McNeal v. Douglas Cy.*, Douglas County Superior Court cause number 04-2-00045-6, and to the Shorelines Hearings Board. In both cases, SEPA review was found to be adequate. CP Vol. 41, 0-7842.

An initial review was conducted under NEPA by the Federal Highway Administration (FHWA). AR Vol. 25, 0-4630-4724. The NEPA environmental assessment addressed the potential impact to orchardists. AR Vol. 25, 0-4646. The environmental assessment included an analysis of the impact of conversion of farmland. AR Vol. 25, 0-4694. The FHWA made a finding of no significant impact. AR Vol. 25, 0-4744.

State Parks was lead agency under SEPA. State Parks adopted the NEPA documents and issued its own determination of non-significance. AR Vol. 24, 0-4546. Appellants allege that SEPA review is inadequate on a new theory, not raised before, that State Parks failed to study alternatives for a project that might involve alternative uses of resources. They are wrong. State Parks considered alternatives in the early planning and

design phase of the project. AR Vol. 17, 0-3106, 3108 to 3135. State Parks specifically considered two alternatives to the current proposed route for the Rocky Reach Trail. The first alternative route was closer to the Columbia River, but it would have required acquiring land in private ownership and some of the private landowners were unwilling to sell. AR Vol. 17, 0-3106, 3108-35. The second alternative route was along Highway 2/97, but it did not meet the need to provide a multi-modal transportation alternative to Highway 2/97 and to increase recreational opportunities along the Columbia River. *Id.*

The superior court held that the SEPA decision was proper and no further review was necessary absent changes that result in a significant environmental impact.

Consistent with this court's decision in the companion appeal of the Shoreline Hearings Board's decision upholding issuance of the Shoreline Substantial Development Permit, no further review is necessary under the State Environmental Policy Act unless there are changes to the proposed project that would result in probable significant adverse environmental impacts.

AR Vol. 20, 0-3663 (Sept. 13, 2005).

The superior court's ruling was consistent with the SEPA rule indicating that an agency acting on the same proposal shall use an

environmental document unchanged unless there are substantial changes likely to have a significant adverse impact or there is new information indicating such adverse impacts. WAC 197-11-600(3)(b). This rule applies whether the initial review results in a determination of non-significance (DNS) or an environmental impact statement.

There have been no changes to the project since the original NEPA/SEPA review. Appellants have not shown this Court any change in the project since the initial SEPA review that might result in an adverse significant environmental impact. Once the superior court approved the existing SEPA review, State Parks justifiably relied on that review and had no legal obligation to update the review for the same proposal. WAC 197-11-600(3).⁴

G. The BOCC Made the Right Choice for the Community.

It is apparent from the record that the community was deeply involved in this proposal. There was opposition, but far more people supported the project than opposed it. As many as 1,500 people signed a petition in support of the project. AR Vol. 32, 0-6078 to Vol. 33, 0-6282. Although community support is not by itself enough to justify a project,

⁴ *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 34, 785 P.2d 447 (1990) (the [SEPA] regulations do not require a Supplemental Environmental Impact Statement [SEIS] if the existing documents cover the significant environmental impacts).

community views should be given substantial weight. *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462, 573 P.2d 359 (1978).⁵

Balanced against the majority interest in the project was the alleged concern that all the mitigation conditions imposed by the county to protect the agricultural uses were not effective. Some of the testimony against the trail, however, actually suggested that the trail could co-exist in the agricultural zones.

Here's the deal; WSDOT sells the property to the adjacent orchardist with a proviso that the orchardist allows parks to construct the trail on the purchased land. Since the orchardist owns the land on which the trail is built, the liability issue from bodily injury goes away, that's huge. It's a win win [sic] situation, Parks gets their trail and the orchardist gets his land back, problem solved and everyone's happy.

AR Vol. 32, 0-6077 (Jack Feil by letter dated 2-24-08); *see also* CP Vol. 40A, 0-7705 (VT 2-25-08 at 56 ll. 2-3).

The county commissioners reviewed this project under the standards set forth in the existing zoning laws, as previously adopted under the GMA, listened to all concerned, and ultimately decided that the

⁵ Although the Court in *Parkridge* went on to find the rezone void for lack of changed circumstances, the result would be different here because the Court subsequently held that changed circumstances are not a necessary element of a rezone that implements the comprehensive plan. *Save Our Rural Evn't v. Snohomish Cy.*, 99 Wn.2d 363, 370, 662 P.2d 816 (1983). The site-specific project involved in this present case is authorized by current zoning laws and consistent with and fulfills the comprehensive plan.

project met the requirements for a recreational overlay as prescribed in DCC 18.46.

H. State Is Entitled to Attorneys' Fees.

Pursuant to RCW 4.84.370, the Respondent State of Washington is entitled to reasonable attorneys' fees and costs incidental to the appeal of a land-use decision when the State prevails before the appellate court, previously prevailed before the county, and in all prior judicial proceedings. In the event the Respondent State of Washington prevails in this appeal, the State will have satisfied all elements of RCW 4.84.370. The Respondent State of Washington asks this Court to award the State its reasonable attorneys' fees and costs.

V. CONCLUSION

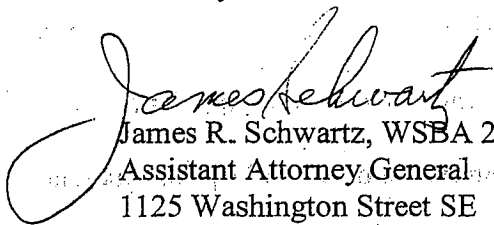
This project is authorized by the county's comprehensive plan and zoning regulations. The county considered the application in light of the standards set forth in the zoning code, conditioned the use to mitigate potential conflicts with adjacent land uses, and approved the application as being in the best interest of the people of Douglas County. The EWGMHB recognized that it lacked jurisdiction to review the project under the GMA. That EWGMHB decision should be affirmed. The Board of County Commissioners' approval is authorized by its own

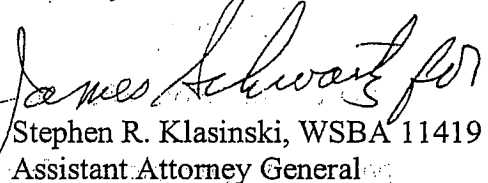
comprehensive plan and zoning regulations. The BOCC's approval is supported by substantial evidence and should be affirmed.


Respectfully submitted this 16th day of April, 2009.

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Question # 21: Has Parks studied, developed or considered any alternative routes for a pedestrian/bicycle trail between the existing trail head south of Odabshian bridge and Lincoln Rock State Park? If so, provide a copy to Feil and a copy to place in the record.

ANSWER: Yes, some alternative routes were considered by WSPRC during the early planning and design phase of the project. Copies of draft site plans depicting the alternative trail routes are attached to this response letter (Attachments 1, 2, 3).

The proposed Rocky Reach Trail is designed to utilize existing publicly owned lands; however, in order to minimize impacts to adjacent landowners that have orchards on both sides of the WSDOT corridor, WSPRC considered locating some sections of the trail closer to the Columbia River. These alternative routes would have involved acquiring some lands in private ownership and would have also impacted county-designated critical areas. WSPRC contacted affected landowners to discuss the potential for acquiring land necessary for these alternative routes. No landowner was willing to sell or grant an easement for the additional lands required, so further consideration of these alternative routes was abandoned.

Consideration was also given to locating the trail along Highway 2/97. However, this alternative does not meet the project purpose and need to provide a multi-modal transportation alternative to Highway 2/97 and to increase recreational opportunities along the Columbia River within the greater Wenatchee and East Wenatchee communities. Also, as established in the Douglas County Shoreline Master Program and Shoreline Design Area plans, there is a public need for access to shoreline areas in the county.

Question # 22: Have any contractual agreements been proposed, negotiated or executed between Parks and WSDOT that assure Parks control over the real property upon which the trail and set back areas are proposed to be located? If so, provide a copy to Feil and a copy to place in the record.

ANSWER: Yes, a number of draft lease agreements (1999, 2002) between WSDOT and Parks have been proposed, but a final agreement has not been executed. Copies of draft agreements are attached to this response letter (Attachments 4, 5). No negotiations are currently taking place between WSDOT and Parks.

ATTACHMENT 1

All acreage figures are approximate and
are presented for discussion purposes only

Orchard Area Lost
by Trail and 50 Ft. Buffer

1.13 Ac.

Orchard Area Remaining
on PUD Lease Area

5.14 Ac.

Chelan Co. PUD

Orchard Area Remaining
on DOT Lease Area

2.80 Ac.

No leaseholder
of record

DOT
Right of Way

Trail Alignment

Wells & Wade

Rocky Reach Trail

14/14

LEASE AGREEMENT

WHEREAS the Washington State Department of Transportation (hereinafter referred to as the "State") owns certain unconstructed right-of-way along that portion of the Columbia River Shoreline located in Douglas County, lying northerly of the Odabashian Bridge; AND

WHEREAS, the State acquired said lands for a highway purpose and once planned to build thereon a highway and a parallel bicycle and pedestrian trail; it is presently uncertain as to its future plans for this transportation corridor; AND

WHEREAS, as part of a comprehensive trail plan, and to alleviate some of the bicycle and pedestrian traffic along State Route 2/97, the Washington State Parks and Recreation Commission desires to construct a pedestrian and bicycle trail within said unconstructed right-of-way along the Columbia River Shoreline lying northerly of Odabashian Bridge in Douglas County, as shown on Exhibit "A";

NOW, THEREFORE, the parties agree to the Lease terms and responsibilities set forth below this _____ day of _____, 1999, by and between the Washington State Department of Transportation, hereinafter called the State, and the Washington State Parks And Recreation Commission hereinafter called the Tenant.

1. DEFINITIONS. As used throughout this Lease the following terms shall have the meanings set forth below:
 - a. "Tenant" means the Washington State Parks and Recreation Commission.
 - b. "State" means the Washington State Department of Transportation.
 - c. "Secretary" means the Secretary, Washington State Department of Transportation.
 - d. "Personal Property" means all property other than real estate; provided, Personal Property shall also include any minor improvements such as benches, trash receptacles, drinking fountains, and small covered shelters.
 - e. "Trail" means a bicycle and pedestrian trail designed, constructed, operated and maintained by the Tenant, and from which motor vehicles are excluded, except for emergency vehicles as noted elsewhere in this Lease.
2. LEASED PREMISES. The State hereby leases to the Tenant that land hereinafter referred to as the "Leased Premises," as shown on Exhibit "A" attached hereto and by this reference made a part hereof. This trail generally extends from the vicinity of the Odabashian Bridge to Rocky Reach Dam. The width of the Leased Premises is _____ feet, being _____ feet on each side of the centerline of the trail. If at any time the State has need for any portion of the Leased Premises for highway purposes, the State will adjust the Leased Premises as necessary in its sole judgment to accommodate highway needs in accordance with the approved plans in Paragraph 6 of this Lease.

The second goal of the master program is a circulation element goal. Circulation, of course, is the term that planners use for transportation, and that is to create and maintain a comprehensive circulation system which provides for safe, convenient, economic and diversified movement of people with minimum disruption to the shoreline area and environment.

There's a recreation goal, which encourages development of diverse, convenient and adequate recreational facilities along the shoreline.

The fourth goal is a historical cultural element, and that is to protect and restore areas having historical, cultural, educational or scientific values.

Now, there are a laundry list of additional policies regarding access and protection of archeological areas and enhancing or taking advantage of scenic views and vistas, protecting the shoreline, providing guidance on how the shoreline is accessed.

The Douglas County shoreline master program, like many of the 1970s vintage, lays out in some cases some fairly specific standards and in other cases some general policy guidance that still is

applicable today.

Q And does the shoreline master program deal at all with agriculture?

A Yes, it does.

Q And how does it discuss agriculture?

A Agriculture is an authorized use in the shoreline master program; that is, it is given the same status as other development activities. It has a place in the master program, just as residential development does, shoreline works and structures, roads and the like.

And as we pointed out in our staff report, one of the difficulties in this project for staff was the fact that this is a shoreline permit and that the shoreline master program does not treat agriculture as having any priority in use over any other.

The opposition that we were noting from the public was not in opposition to the fact that it was a trail or, you know, the fact that this was a system. It was related to agriculture. There were no comments on the impact on the shoreline or whether or not it conformed with the master program. It was directly related to the land-use issue there.

Again, agriculture has policies dealing with buffering ag and the water resources. It has a policy regarding the placement of animal feedlots, which is probably a good idea. It has policies regarding erosion control that might result from cultivation of crops. It has a policy regarding pesticide use and that occurring in conformance with Washington state law.

Agriculture is actually restricted in the natural environment. Low-intensity agriculture is authorized in the conservancy environment, and in the rural environment in which most of this project lies, it is considered a permitted use and there are some regulations regarding how agriculture would be conducted in this area.

Q To turn to the Shoreline Management Act itself, I'm assuming, then, Douglas County made a determination that the project was consistent with the policies expressed in the act?

A Yes, we reached that conclusion.

Q And can you explain the reason for reaching that conclusion.

A From a consistency standpoint, the project met the goals and the policies of both the Shoreline Management Act and the shoreline master program,

and in the instances where potential adverse environmental impacts were noted in the environmental assessment, that the applicant did provide for project redesign and/or other mitigation measures to minimize those impacts.

Q Okay. One of the issues that's been raised in this case, as you're aware, is the question of whether or not the project has long-term benefit, and there's been some testimony from Parks about that issue.

How does the county typically deal with that issue, or how does it come up in your processing of shoreline permits?

A In terms of longevity and/or whether a project can make it?

Q Yes.

A Probably the -- well, let me say that we don't, and then let's qualify that a little bit.

The qualification would be if a project application were submitted to Douglas County that provided for a specific operational time frame -- and more often than not what we see are those for mineral operations, gravel pits and the like, where there will be a time frame specified that the operation will occur -- our review would be

1 land uses The record demonstrates that the facility will serve both transportation and
2 recreation functions

3 G The Douglas County Code permits recreation trails outright only in the Tourist
4 Recreation Commercial zone

5
6 H In addition to the Shorelines Substantial Development Permit already obtained by
7 Parks, Parks must apply for and obtain a ~~Recreational Overlay and/or a Conditional Use~~
8 Permits may be required by the Douglas County Code.

9
10 I Consistent with this court's decision in the companion appeal of the Shoreline Hearings
11 Board's decision upholding issuance of the Shoreline Substantial Development Permit,
12 no further review is necessary under the State Environmental Policy Act unless there
13 are changes to the proposed project that would result in probable significant adverse
14 environmental impacts

15 J Douglas County was ordered to prepare and certify the record before the Hearing
16 Examiner The record prepared and certified by Douglas County consisted of
17 approximately 1,560 pages of documents These documents were identified by
18 Douglas County as exhibits that the Hearing Examiner considered in the proceeding
19 before him Petitioner Feil paid \$318.15 for the production of that record pursuant to
20 RCW 36 70C 110(3) In addition, Douglas County submitted a tape recording of the
21 Hearing Examiner's December 18, 2003 public hearing Petitioner Feil paid \$ 1,022.00
22 to have that tape recording transcribed and certified as a verbatim transcript, pursuant to
23 RCW 36 70C 110(1), which was also filed with the Court There was no attempt by
24 any party to shorten the record pursuant to RCW 36 70C 110(2)

25 Reimbursement for the cost of the certified record *and hearing transcripts* shall be paid by the State Parks and
26 Recreation Commission and the Washington State Department of Transportation to Petitioner



STATE OF WASHINGTON
WASHINGTON STATE PARKS AND RECREATION COMMISSION
EASTERN WASHINGTON RESOURCES DEVELOPMENT OFFICE

2201 N. Duncan Drive • Wenatchee, Washington 98801-1007 • (509) 662-0422 • Fax (509) 663-9754

October 18, 2006

Mr. Andrew Kottkamp, ESQ., Douglas County Hearings Examiner
Douglas County Land Services
140 19th Street NW, Suite A
East Wenatchee, WA 98802

RE: Rocky Reach Trail RO-06-01 / SPD-06-02

Dear Mr. Kottkamp:

In conformance with your October 11, 2006 Order, please find enclosed for your consideration additional rebuttal testimony offered by the Washington State Parks and Recreation Commission in response to several comment letters entered into the record from September 12, 2006 through September 29, 2006.

As the record demonstrates, this trail has long been a component of Douglas County Plans, including the Greater East Wenatchee Comprehensive Plan (GEWCP) and the Shoreline Area Design Plan. In fact, the trail alignment was identified in the GEWCP as early as 1988, as shown on the enclosed Circulation Plan Map.

Throughout the planning process, we have sincerely endeavored to address the issues and concerns of adjacent landowners, as demonstrated by numerous mitigation measures and conditions that are incorporated into the proposal.

In summary, this project has been designed to be consistent with the GEWCP and applicable development regulations. Ultimately, I'm confident that you will find this consistency provides a solid foundation for approval of RO-06-01/SDP-06-02.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Gillespie", written over a horizontal line.

Mark D. Gillespie
Project Manager

Cc: Mark Kulaas, Douglas County
Karolyn Klohe, AAG

Washington State Parks and Recreation Commission
RO 06-01/SPD 06-02 Supplemental Rebuttal Testimony
October 18, 2006

Bruce Smith 9/25/06 Letter

"I...have thoroughly searched the entire Wenatchee-Douglas County area for alternate (bee hive storage) acceptable sites, but none exist."

This statement contradicts Mr. Smith's previous testimony that alternative sites exist in the Pallisades area of Douglas County and the town of Othello (9/12/06 Hearings Transcript, page 98; SHB Transcript, pages 50, 56).

It is likely that the bee yard will eventually have to be relocated in any case, as the bee yard is within the UGA and in an R-L zoning district. Agricultural uses, such as commercial bee keeping, are not enumerated as either a permitted or conditional use in this district. County code encourages the discontinuance or termination of nonconforming uses, unless lawfully permitted and established. We are not aware of any documentation in the record that indicates that commercial bee keeping in this location is a lawfully permitted use, pursuant to DCC 18.82.010.

The rest of the issues in Mr. Smith's letter are addressed in Parks' September 29, 2006 rebuttal testimony.

Jack Feil 9/20/06 Letter

"I asked Parks, through Mr. Mark Gillespie, to fence off my leased orchard land (on DOT ROW) from the trail, his response was 'it's not in the plan and we don't have the money to do it.'"

This is hearsay and is not an accurate representation of any previous statements made by Mark Gillespie.

Orchardists of Baker Flats Letter, date stamped 09/29/06.

"The helicopter will not fly..."

A least one helicopter operator in the Wenatchee Valley has indicated that this is an invalid assertion; see page 6 of Parks' September 29, 2006 rebuttal testimony.

"Such replacements (bee yards) do not exist."

See above rebuttal to Bruce Smith and pages 2, 3, and 4 of Parks' September 29, 2006 rebuttal testimony.

Washington State Parks and Recreation Commission
RO 06-01/SPD 06-02 Supplemental Rebuttal Testimony
October 18, 2006

"Although Parks discussed a barbless wire strand fence designed to create passage for wildlife (and trail users), it never committed to the location of even that unsatisfactory fence."

State Parks is committed to complying with all the conditions of the January 12, 2004 Shoreline Permit (SP#87), including Condition #5 that addresses fencing of the two county-designated environmentally sensitive areas. See Parks' September 29, 2006 response to Rowley & Klauser Cross-Examination Question #19.

"Concerning the buffer..."

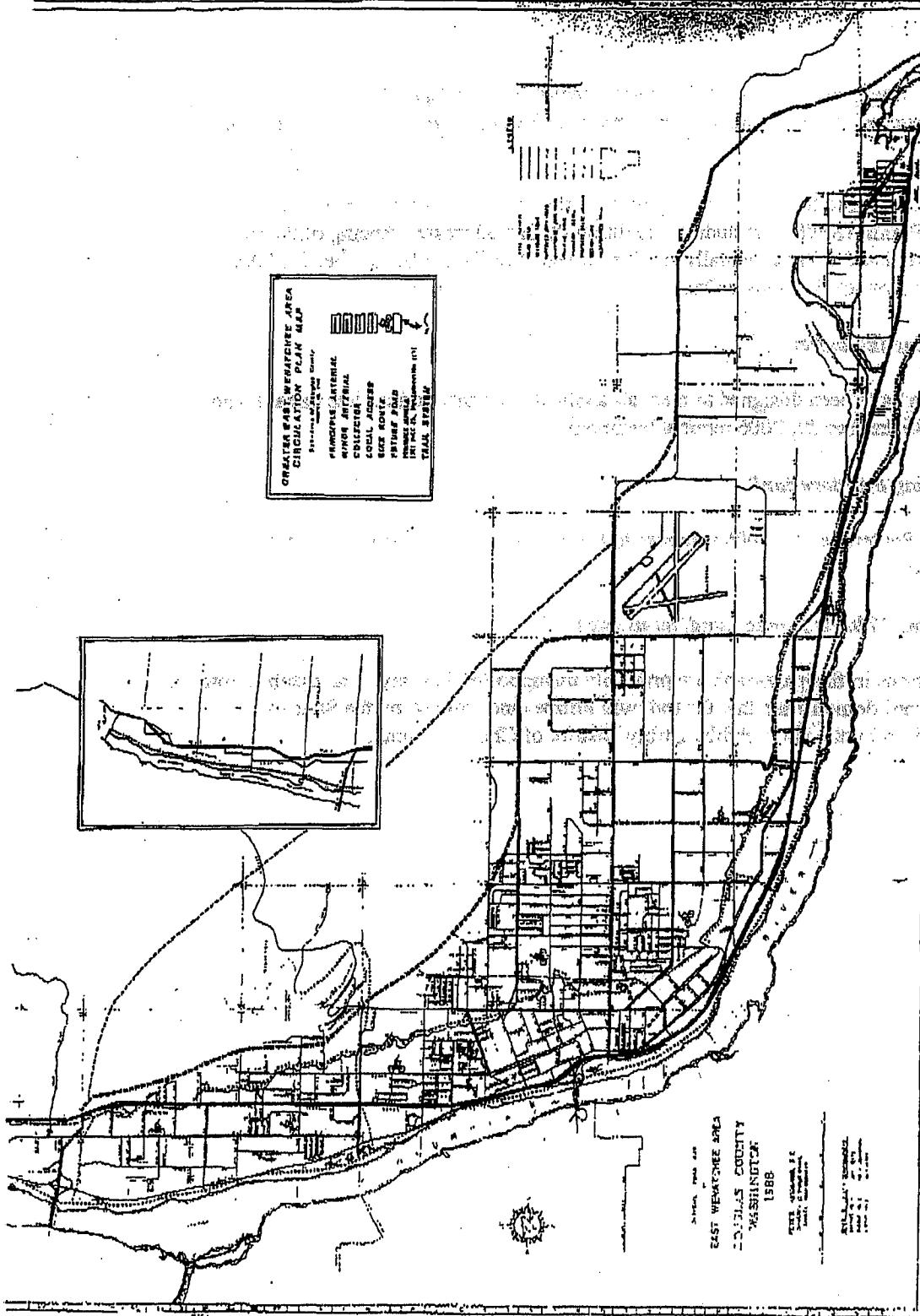
The buffers have been designed to meet all applicable county codes. See pages 8 and 9 of Parks' September 29, 2006 rebuttal testimony.

"Concerning trail location"

See Parks' September 29, 2006 response to Rowley & Klauser Cross-Examination Question #21.

"Concerning 'This is Public Land, let us use it.'"

The allegations in this paragraph are primarily unsupported hearsay. The exhibits entered into the record demonstrate that the trail will utilize lands owned by the State of Washington or by the No. 1 Public Utility District of Chelan County.



of the Loop Trail. Lincoln Rock State Park is located on Chelan County PUD property at Rocky Reach Dam. This 80-acre facility however is operated by Washington State Parks. It provides tent/recreational vehicle camp sites, sports fields, picnicking areas, boat ramps and docks, an amphitheatre, swimming area and children's playground.

Two golf courses are located within the planning area. The Wenatchee Golf and Country Club is a private golf course that encompasses 110 acres. The Highlander Golf Course is 115 acres and is located between South Nile and Union Streets.

EASTMONT METROPOLITAN PARK DISTRICT

In 2001, the Eastmont Recreation Service Area updated the 1991 plan that was written by Douglas County Parks and Recreation Department. This plan encompasses both East Wenatchee and Wenatchee. In 2004, the Eastmont Metropolitan Parks District was formed to better meet the parks needs of the urban area.

Rapid growth and increasing demand for recreational opportunities call attention and concern to the dwindling availability of land for future park development and open space. In order to plan for the recreational needs of the residents of the Greater East Wenatchee Area, several proposals have been made in the Park, Recreation and Open Space Plan. These proposals were based on recommended standards by the IAC and current use levels. Additionally the plan identifies needs for the entire Wenatchee Area. The district's predecessor, the Eastmont Recreation Service Area, has identified the following facilities which are necessary to meet the 20 year growth period.

Athletic Fields and Playgrounds

Description: Athletic fields and playgrounds are designed for intense recreational activities like field and court games, playground apparatus and picnicking. A suitable athletic field and playground site should be capable of sustaining intense recreational development and be easily accessible to the population. The present supply should be increased by another 75 acres.

Linear Bicycle/Pedestrian Trails, Jogging Trails, Equestrian Trails

Description: A variety of different types of trail systems should be provided. Trail systems should be designed to accommodate high, medium and light use activities and be handicap accessible. They should also be designed to the level and type of activity anticipated.

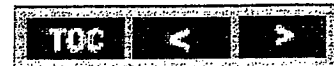
The current trail system should be increased to extend north to connect with Lincoln Rock State Park. The equestrian trail system should be increased by 50 miles.

2. Applications for shoreline management substantial development permits, variances, conditional use permits and nonconforming use permits pursuant to the shoreline management act and shoreline master program;
3. Appeals alleging an error in a decision of the director of land services in the interpretation or the enforcement of violations of the zoning code or any other development regulation;
4. Appeals alleging an error in a decision by the director of land services in taking an action on a short plat or binding site plan;
5. Applications for variances, conditional use permits, permits for the alteration, expansion or replacement of a nonconforming use, and waivers;
6. Amendments and/or alterations to plats;
7. Petitions for plat vacations;
8. Decisions made in the capacity of the Douglas County building code board of appeals;
9. Applications requesting establishment or amendment of recreational overlay zoning districts;
10. Any other matters as specifically assigned to the examiner by the board of county commissioners or as prescribed by the Douglas County Code.

B. The decision of the examiner on all matters is final and conclusive, unless appealed pursuant to Section 2.13.110 of this chapter.

C. The examiner's decision shall be based upon the policies of the applicable comprehensive plan, shoreline master program, the standards set forth in the various development regulations of the county or any other applicable program adopted by the board of county commissioners. When acting upon any of the above specific applications or appeals, the examiner and/or board of county commissioners may attach reasonable conditions found necessary to make the project compatible with its location and to carry out the goals and policies of the applicable comprehensive plan, shoreline master program, or other applicable plans or programs adopted by the board of county commissioners. (Ord. TLS 00-01-04B Exh. B (part); Ord. TLS 97-05-34B Exh. B (part); Ord. 97-03-11B Exh. A (part); Res. CE 93-034 (part))

2.13.080 Report by the department of transportation and land



Chapter 14.06 APPLICATION FORMS

Sections:

14.06.010 Application forms.

14.06.010 Application forms.

A. An application shall be made using the appropriate form adopted by the department.

B. Each adopted application form shall, at a minimum, include the following:

1. That the application form be filled out legibly, in blue or black ink, either hand printed or typewritten;
2. The name, mailing address and telephone number of each applicant;
3. The name, mailing address and telephone number of the applicant's representative, if any;
4. The name, mailing address and telephone number of each owner of the subject property, if different than the applicant(s);
5. The name, mailing address, telephone number and contractor registration number of the applicant's prime contractor, if any;
6. The parcel number, legal description and assessor's parcel map for each parcel which is the subject of the proposed development;
7. The signatures of each applicant or the applicant's representative, and each property owner if different than the applicant(s);
8. Any other information, documents or materials, as determined by the department, which may be required in the body of the form or by an attachment to the form.

C. Each application form shall require designation of a single person or entity to receive determinations and notices required under the Douglas County Code or by RCW Chapter 36.70B. Where a determination or notice to the applicant is required by the Douglas County Code or RCW Chapter 36.70B, "applicant" shall mean the person or entity so designated.

D. Each application shall contain the following statement:

This application shall be subject to all additions to and changes in the laws, regulations and ordinances applicable to the proposed development until a determination of completeness has been made pursuant to DCC 14.08.030.

(Ord. TLS 97-05-34B Exh. B (part))

STAFF REPORT

TO: DOUGLAS COUNTY HEARING EXAMINER
FROM: DOUGLAS COUNTY TRANSPORTATION & LAND SERVICES
SUBJECT: SP# 87
DATE: DECEMBER 18, 2003

I. GENERAL INFORMATION

Proposal: An application submitted by the Washington State Parks and Recreation Commission for the construction of a trail within Washington State Department of Transportation right-of-way and property owned by Chelan County Public Utility District Number 1. The applicant has indicated that the purpose of the trail development is to serve a highway purpose by materially increasing the safety of motorists, bicyclists, and pedestrians. This safety improvement would be accomplished by providing bicyclists and pedestrians with an integrated multi-modal trail system that would serve as an alternative transportation corridor to State Highway 2/97. This alternative transportation corridor would link residential areas along the existing urban trail system to Lincoln Rock State Park.

The trail would be open during daylight hours only. Interpretive signs and directional markers would be placed along the trail. Approximately 32,000 square feet of native shrubs and grasses would be planted as project mitigation. The trail would be centered in an irregular corridor ranging from 15-25 feet wide, including a 10-foot asphalt top for the trail, plus a 2-foot edging (1-foot gravel shoulder on each side). Several viewpoints would be constructed as viewing areas and as possible rest areas for wheelchair users. Portions of the trail would require slope protection or geotextile application. Existing pump house facilities, located west of the paved trail, would be fenced and gated, with management by the landowner east of the WSDOT ownership line.

A buffer between active orchards and the trail is proposed. The buffer would be 100 feet in most places and no less than 60 feet. Where the buffer would be less than 100 feet, an alternative vegetated buffer would be established. Where farming would continue on both sides of the trail, fencing would be placed on both sides, if requested by the affected orchardist. In such cases, access for farming equipment would be provided by using swing gates that would close off the trail while farming equipment crosses. Additional setbacks between fencing and orchard trees would be provided on a case-by-case basis, as necessary to allow for machinery turnarounds.

Minor earthwork would be necessary, with maximum cut and fill depths of 2 to 3 feet. The trail would cross three intermittent drainage channels. The northern channels would be completely spanned by two bridges approximately 90 to 115 feet long, made of prefabricated steel supported by concrete abutments. An open bottom concrete box culvert would span the third channelized drainage.

- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

RCW 90.58.020 declares additional preference for uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. This section continues on to declare a priority of uses where alteration of the natural condition of the shoreline is authorized. One of the stated priorities is for shoreline recreational uses including those that facilitate public access to the shorelines of the state.

Shoreline Master Program- The Douglas County Shoreline Master Program was approved by Douglas County on November 20, 1972 and was adopted by the Department of Ecology February 20, 1975 (WAC 173-19-170). The Douglas County Shoreline Master Program designates this portion of the Columbia River shoreline as a Rural Shoreline Environment.

Four goals of the Master Program are applicable to the project:

1. PUBLIC ACCESS ELEMENT GOAL

To provide for public access to the shorelines of Douglas County by upgrading existing public access and by providing additional access consistent with the natural features; to assure that this access is as safe as possible, will not have a detrimental effect on other shoreline uses or on the waters themselves, or infringe upon private property rights.

2. CIRCULATION ELEMENT GOAL

To create and maintain a comprehensive circulation system which provides for the safe, convenient, economic and diversified movement of people, with minimum disruption to the shoreline area and environment.

3. RECREATION ELEMENT GOAL

To encourage the development of diverse, convenient and adequate recreational facilities along the shorelines of Douglas County, for the primary use of Douglas County residents. Also, to encourage the development of recreational facilities to attract and accommodate visitors, thus aiding economic growth.

4. HISTORICAL/CULTURAL ELEMENT GOAL

To protect and/or restore areas having historical, cultural, educational or scientific values.

Applicable policies and regulations include:

Archeological areas and historic sites (Section XXII).

The land use designation maps in Chapter 4 of the Greater East Wenatchee volume disclose a general alignment of a trail extending north from the existing trail to the vicinity of Rocky Reach Dam. The maps also note the proposed river park included in the Shoreline Design Area Plan.

In the chapter on Open Space and Recreation, the plan supports the creation of a trail system in general. Policy 2 promotes the acquisition of recreational facilities to meet the needs of the area and Policy 3 encourages preservation of environmentally sensitive areas including the two in proximity to the project.

Policies 12 and 18 for Transportation encourage provision of a coordinated network of streets and trails with particular emphasis on non-motorized transportation.

Additional transportation policy guidance can be found in Chapter 6 of the Douglas County Comprehensive Plan. Policy 14 encourages the promotion of coordinated bicycle, equestrian, and pedestrian way improvements, emphasizing access to schools, parks, employment and service centers and shorelines. Policy 6 of the plan seeks to strive for a reduction in the frequency and severity of highway accidents through the efficient management of resources and through adequate facilities and education that reduce conflicts between different modes of travel.

The area north of Odabashian Bridge is specifically mentioned as unique for commercial agriculture. The plan states that the natural resources of this area are important to the community for economic, aesthetic, recreational/scenic benefits and protection of critical areas. The agricultural policies of the plan focus on the importance of agricultural land. The plan encourages recognition of the inherent characteristics of agricultural practices and directs the county to ensure that public actions are managed to minimize disruption of agriculture. The concepts of expanded setbacks, buffering and resource disclosure statements stem from the comprehensive plan's deference to agriculture when considering potentially conflicting uses.

Additional support for the protection of commercially significant agricultural lands can be found in the rural volume of the comprehensive plan. The plan states, in part, "It is important to preserve and encourage these activities [agriculture] as viable operations and to protect them [agricultural lands] from the encroachment of incompatible uses, particularly through innovative development techniques."

Policies in the rural volume of the comprehensive plan that have applicability include:

- A-1 The County will encourage the retention of agricultural lands of long-term commercial significance, including rangelands and will prevent haphazard growth into these areas.
- A-3 Protect agricultural lands and activities from conflicting non-farm uses and influences.

native shrubs, while the other half would be planted with native grasses. The proposed mitigation for the buffer impact is at a 1:1 ratio.

The applicant has indicated that wetlands and riparian areas on the site have Bald Eagle use during specified times of the year. While such use is not indicated on the county critical area maps, it is highly probable and the applicant has evaluated impacts and proposed mitigation for potential impacts to the Bald Eagles.

Geologically Hazardous Areas: Portions of the subject properties contain severe building soils and steep building soils. Additionally, the proposed trail would cross three intermittent drainages found on site. Chapter 19.18D Resource Lands/Critical Areas-Geologically Hazardous Areas, Douglas County Code, requires the submittal of a geologic site assessment to determine if hazards may be present on-site; and whether mitigation measures can eliminate any potential hazards. The applicant has submitted a Geo-technical Report addressing the evaluation of geologic issues on-site.

Trail Construction within Critical Areas and Resource Lands: DCC 19.18.035 Trails and trail-related facilities.

Construction of public and private trails and trail-related facilities, such as picnic tables, benches, interpretive centers and signs, viewing platforms and campsites may be authorized within designated resource lands and critical areas, subject to the following minimum standards:

1. Trail facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas;
2. Trail facilities shall minimize the removal of trees, shrubs, snags and important habitat features;
3. Viewing platforms, interpretive centers, campsites, picnic areas, benches and their associated access shall be designed and located to minimize disturbance of wildlife and/or critical characteristics of the affected conservation area;
4. All facilities shall be constructed with materials complimentary to the surrounding environment; and
5. Trail facilities shall be located at least a distance equal to the width of the trail corridor away from the wetland edge, as established by the approved wetland boundary survey or aquatic habitat conservation area.

Agricultural Buffer: Douglas County Code Section 18.16.080(F) addresses developments occurring adjacent to agricultural districts. Additionally, the Douglas County Code references this section for use when certain development activities are located within agricultural districts. "When divisions of property for residential lots, planned developments, multifamily developments or manufactured home parks are created adjacent to an agricultural district, the front, side and rear yard setbacks for any structure used for human habitation shall be increased to a distance of one hundred feet as measured horizontally from the agricultural district boundary. Other buffering methods may be utilized to reduce the setback as approved by the review authority and may include berms, landscaping, fencing or a combination thereof. At no time shall the buffer be reduced to less than sixty feet."

approvals, or letters of concurrence that the project will not impact habitat or species for which each agency has jurisdiction was included within the application materials.

Geologically Hazardous Areas: The Geo-technical report submitted by the applicant adequately addresses the requirements for the evaluation and mitigation of potential geologic issues on-site.

Agricultural Resource Lands: The applicant has proposed a variety of measures within project design to address agricultural impacts. These include but are not limited to increased setbacks/buffers, enhanced planted buffers designed in concert with the orchardists and horticulturists to prevent frost pockets, educational signage, fencing, and park ranger patrols and limitation of operation to daylight hours to deter vandalism and fruit theft. The buffering/setbacks proposed are consistent with the setback and buffering requirements established within Douglas County Code Section 18.16.080(F). The additional measures proposed by the applicant were in response to concerns and issues raised by local orchardists. These additional measures exceed the minimum requirements established by county code and appear appropriate for the project given the concerns raised by orchardists.

Shoreline Access, Chapter 19.10, Douglas County Code:

The subject application falls within a WSDOT right-of-way and property owned by the Chelan County Public Utility District #1. As proposed, the project is not inconsistent with the utility and transportation provisions of Chapter 19.10, Shoreline Access, Douglas County Code.

Development Standards, Title 20, Douglas County Code:

Parking: No new parking facilities are proposed for the trail extension. The applicant has provided an analysis of existing parking facility demands and remaining capacity at the Lincoln Rock State Park, 27th St. Trailhead, and Confluence State Park. This analysis indicates that adequate capacity exists within existing facilities to accommodate increased parking demands which may result from the trail extension.

Stormwater: The applicant has indicated in application materials that native soils 2 feet on either side of the trail will function as a stormwater infiltration bioswales. The County Engineer has indicated that these measures address county stormwater concerns for the project. The Department of Ecology has further indicated that a water quality certification for the project is not required.

Signage: Directional, warning, regulatory or information signs authorized by a jurisdiction can be exempted from the performance requirements of Chapter 20.44. This exemption does not eliminate the need for a building permit, (sign permit), if the size or design of the sign warrants one. It appears that much of the signage proposed by the applicant would be exempt.

Public Comments: A significant amount of public comment has been submitted for the subject application. Comments in support of the project application speak to transportation, health, recreation, enhanced tourism, economic, public safety and enhanced shoreline access benefits. Many comments germane to review of the project application were submitted by members of the public who have reservations or are opposed to the subject application.

Some concerns raised by opponents of the subject application are not within the county's purview for consideration and evaluation of whether the shoreline permit should be approved or denied. While these concerns are noted, planning staff has no statute-based authority when reviewing a shoreline management substantial development permit, to address or evaluate issues such as: agricultural liability/insurance, SEPA process (given that the county was not the SEPA lead authority and the comment period closed two years ago), tax loss or gain to the community as a result of the project, lawsuits, state funding priorities or project choices, and park facility-funding longevity.

The majority of comments opposed to the application were associated with concerns over agricultural impacts. In general, these concerns included but were not limited to: impacts to beekeeping operations, elimination of helicopter spray operations, inability to contain spray drift given the buffer widths proposed, potential for frost pockets with the planting of enhanced buffers, vandalism and fruit theft, that the proposed trail is an incompatible use inconsistent with and detrimental to the preservation of agricultural lands of long term commercial significance, and health and safety issues for trail users given the proximity of incompatible agricultural operations.

The Douglas County Comprehensive Plan, Greater East Wenatchee Area Plan, and Douglas County Shoreline Design Area Plan specifically support the development of the proposed trail extension. These plans further clarify the issue of land use compatibility with agricultural uses by the inclusion of a trail corridor in land use designation maps. Fundamental decisions on compatibility of land uses were made in the Comprehensive plans adopted by Douglas County. Trail development is also consistent with the goals and policies of the Douglas County Shoreline Master Program.

Measures and criteria to address compatibility with agricultural operations were specified in the comprehensive plans and included innovative techniques, fencing, buffers, and landscaping. Regulations implementing buffering requirements of the comprehensive plan were codified by Douglas County. These techniques and standards went through substantial review procedures with opportunities for the public or commenting agencies to appeal decisions made by the County. The provisions of the code and comprehensive plans have not been found inconsistent with the intent of the Growth Management to designate and protect agricultural lands of long-term commercial significance and to prevent the encroachment of incompatible land uses within these lands.



Douglas County
Transportation & Land Services
140 19th Street NW
East Wenatchee, WA 98802-4109



June 16, 2003

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Administrator

Transportation
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Steve Clem
Douglas Co. Prosecuting Attorney
P.O. Box 360
Waterville, WA 98858

FILE COPY

Dear Steve:

The Washington State Department of Transportation has provided to us a letter (copy attached) authorizing the Washington State Parks and Recreation Commission to submit an application for a Shoreline Management Substantial Development Permit. The permit application requests approval to construct the Rocky Reach Trail.

DCC 14.06.010(B)(7) requires development permit application forms to contain the signatures of each applicant or the applicant's representative, and each property owner if different from the applicant(s). The purpose of this is to gain acknowledgement from property owners that they are aware that land use changes to their property are being requested. In the case of the Rocky Reach Trail shoreline permit application, the WSDOT has provided the letter of authorization to make application.

While the letter goes on to assert certain qualifications, particularly with respect to building permits, the application materials presented to us are only for a shoreline permit and not any building permits. The issue of building permits does not appear to be applicable as at this point we are unaware that any structures requiring a permit required by the uniform codes are proposed. We may need to address the qualifications in the future, but only with respect to possible building permits.

We believe that the WSDOT letter meets the intent of DCC 14.06.010(B)(7) for processing of the Substantial Development Permit. We would appreciate your comments on this.

Very truly yours,

Mark D. Kulaas
Director of Land Services

*Have okay. Letter back
re: 2nd R: applic of
local zoning.*



**Washington State
Department of Transportation**
Douglas B. MacDonald
Secretary of Transportation

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300

360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

June 12, 2003

RECEIVED

Mark Kulaas
Director of Land Services
470 Ninth St NE
East Wenatchee, WA 98802

JUN 16 2003

Douglas Co. TLS

RE: Rocky Reach Trail

Dear Mr. Kulaas:

This letter will confirm that the Washington State Department of Transportation (WSDOT) is aware of the project proposed by Washington State Parks to construct a transportation trail that will be partially located on WSDOT property in Douglas County. Per this letter, WSDOT authorizes the Washington State Parks to make application for the Shoreline Substantial Development and Critical Areas permits required for this proposal. Construction within state highway right of way is subject to the Shoreline Management Act, chapter 90.58 RCW.

However, WSDOT does not authorize an application for a building permit for those parts of the transportation trail located within state highway right of way. The Growth Management Act does not subject the construction of transportation facilities of state-wide significance, such as interregional state principal arterials (RCW 47.06.140), to local building ordinances. Since the Rocky Reach Trail is being constructed for a highway purpose, partially within highway right of way, and in support of SR 97, which is a transportation facility of state-wide significance, the trail's construction is not subject to an application for a building permit for those parts that are to be sited on highway right of way. It is also WSDOT's understanding that Douglas County will not be requiring a conditional use permit whereby the county would be rezoning the state highway right of way since the highway right of way is also not subject to local zoning ordinances.

We have reviewed the JARPA and have the following comments:

Please note that in the Biological Assessment attached to the JARPA, certain statements are made that WSDOT does not accept nor support. The first of these statements is in the introduction on page 1. It states, "The trail will increase public access and recreational opportunities for hikers and bicyclists...." The other statements are on page 3. They are: "The purpose of the trail is to increase public access and recreational opportunities..." and "The trail is also being considered to add rural, agricultural, and natural settings to the existing trail system..." The trail is being constructed for a highway purpose to improve highway safety and to provide an alternate commute option for residents; therefore, WSDOT does not agree with and does not adopt the cited statements.



STATE OF WASHINGTON

WASHINGTON STATE PARKS AND RECREATION COMMISSION

7150 Cleanwater Lane • P.O. Box 42650 • Olympia, Washington 98504-2650 • (360) 902-8500

FAX (360) 753-1594 • Internet Address: <http://www.parks.wa.gov>

TDD (Telecommunications Device for the Deaf): (360) 664-3133

STATE ENVIRONMENTAL POLICY ACT

DETERMINATION OF NONSIGNIFICANCE

AND

ADOPTION OF EXISTING ENVIRONMENTAL DOCUMENT

Description of current proposal: Rocky Reach Trail – Construct 5.1 miles of public multi-modal trail that follows the generally north-south oriented eastern shore of the Columbia River (Rock Island Reservoir).

Proponent: Washington State Parks and Recreation Commission

Location of current proposal: Starting at the Odabashian Bridge Highway 2/97 at the north end of the City of East Wenatchee and continuing north 5.1 miles to Lincoln Rock State Park located in Douglas County, Washington.

Title of document being adopted: Rocky Reach Trail National Environmental Policy Act (NEPA) Environmental Assessment (EA), Errata, Environmental Commitments/Mitigation Measures and all documents incorporated by reference therein.

Agency that prepared document being adopted: U.S. Department of Transportation Federal Highway Administration, Washington State Department of Transportation, and the Washington State Parks and Recreation Commission.

Date adopted document was prepared: April 2001.

Description of document (or portion) being adopted: The NEPA Environmental Assessment (EA) and Errata analyzes the environmental impacts associated with the proposed development of the 5.1 mile Rocky Reach Trail. The documents include specific environmental commitments and mitigation measures to reduce or eliminate the likely adverse environmental impacts of the proposal.

If the document being adopted has been challenged (WAC 197-11-630), please describe:

The document is available to be read at: Washington State Parks and Recreation Commission, Eastern Region Office, 2201 North Duncan Drive, Wenatchee, WA 98801-1007, between the hours of 8 A.M. and 5 P.M. Monday through Friday, excluding holidays.

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after a review of a completed

*National Environmental Policy Act
Environmental Assessment*

**Rocky Reach Trail
Douglas County, Washington**

Submitted Pursuant to 42 U.S.C. 4332 (2)(c)

by the

**U.S. Department of Transportation
Federal Highway Administration**

and

**Washington State Department of Transportation
and Washington State Parks and Recreation Commission (Designated Local Agency)**

April 2001

Other Risks. The presence of trail users and farming equipment would create some public safety risks. To minimize this risk of accident, the following features have been added to the project design:

- Signs would be placed to inform visitors and to warn them about noise, crossing machinery, and normal farming practices.
- Where farming would continue on both sides of the trail, fencing would be placed on both sides, if requested by the affected orchardist. In such cases, access for farming equipment would be provided by using swing gates that would close off the trail while farming equipment crosses. Additional setbacks between fencing and orchard trees would be provided on a case-by-case basis, as necessary to allow for machinery turnarounds.

7.1.2 Key Issue 2: How would the project affect farming activities of local orchardists?

7.1.2.1 Affected Environment

As of fall 2000, the proposed trail location (with buffers) contained approximately 24 acres of irrigated fruit orchards. Douglas County ranked sixth of counties in Washington for orcharding in 1992, with approximately 580 orchards totaling 17,300 acres (NASS 1998). However, due to economic changes, orchards have been declining in the project area and throughout the region.

7.1.2.2 Impacts and Mitigation Measures

Construction of the trail would require the removal of up to 24 acres of active orchard within the WSDOT right-of-way or on lands owned by the PUD. In addition, the trail could complicate day-to-day operations for orchardists who farm in this area. In two cases, the trail would bisect orchards, requiring orchardists to cross the trail to access their crops and irrigation controls. In three other cases, the trail would bisect (pass over) underground irrigation lines. As stated earlier, orchardists would have some additional constraints when spraying trees near the trail (for example, if winds were blowing from the spray target area toward the trail).

In addition to orchards, at least one grouping of beehives is located adjacent to where the trail is proposed. Hives may need to be moved to avoid conflicts and/or risks to recreationists. The trail would also attract people into an area that currently receives little public use. Some of these people may trespass onto adjacent private lands or tamper with equipment.

In addition to DCC development and performance standards and other mitigation measures identified under Key Issue Number 1, existing irrigation systems operated by the orchards would be left in operation and under the control of the present orchard operators. Existing pump houses and valves would be fenced, and existing delivery lines would not be disturbed. Irrigation systems and related agricultural utilities would be maintained, as defined on a case-by-case basis during final design and construction.

Area Description

To assist with your determination, I have attached a site plan, aerial photo, site photos, a set of project maps showing the trail and buffer, and a soil impact table.

The trail would be constructed within a narrow valley bench known as Baker Flats, located between U.S. Route 2/97 and the Columbia River. Much of the Baker Flats area contains irrigated fruit orchards producing apricots, pears, cherries, peaches, and several varieties of apples. About 45 single-family residences are located in this area. Land use along the shoreline of the Columbia River is natural open space and wildlife habitat with human activity, including orcharding and limited seasonal recreational use of the shoreline (hunting, boating, jet skiing, and water skiing). The Rocky Reach Hydroelectric Dam is located near the north end of the proposed trail alignment.

The proposed trail corridor is within a largely undeveloped right-of-way controlled by WSDOT or the Chelan County PUD #1. Several orchards have been established through lease agreements within the WSDOT right-of-way. For the most part, the trail would be located between the orchards and the river. Two orchards are located between the trail and the Columbia River. No buildings or significant structures exist within the trail corridor.

Farmland Conversion Impact

The project would require the conversion of approximately 25 acres of active orchard to recreational uses. The actual acreage may be less, since some orchardists have been removing orchards within the right-of-way and this trend may continue.

The following table summarizes soil impacts based on the Douglas County Soil Survey (1981) and NRCS soil classifications. Attachment 5 provides a breakdown of impacts by soil name and capability subclass.

	Prime Farmland Soils	Unique Farmland Soils	Total
Acreage where trail would be built	0.83	4.5	5.33
Acreage within buffer	10.02	28.84	38.86
Total acreage	10.85	33.34	44.19

Consistency with Local Laws to Protect Farming

The Greater East Wenatchee Area Comprehensive Plan defines the project area as an "Agriculture Resource Zone." The project would be consistent with this zoning if Douglas County defines a Recreational Overlay District (R-O) for the trail as requested by WSPRC. Applications for the establishment of an R-O District require County legislative review under DCC 14.10.050. The width of the Recreational Overlay would be 20 feet, or 10 feet on each side of the centerline of the right-of-way.

-6-

References

Pacific Fishery Management Council (PFMC). 1999. Amendment 14 to the Pacific Coast Salmon Plan. Appendix A: Description and Identification of Essential Fish Habitat, Adverse Impacts and Recommended Conservation Measures for Salmon. Portland, Oregon.

TOTAL P.07

3031

415
0-000004724



Jones & Stokes

RECEIVED

NOV 21 2003

DOUGLAS COUNTY TLS

November 21, 2003

Mr. Glen DeVries
Douglas County Transportation and Land Services
140 19th Street NW, Suite A
East Wenatchee, WA 98802

SUBJECT: Washington State Parks and Recreation Commission SP #87 -Rocky Reach Trail

Dear Mr. DeVries:

This letter has been submitted in response to letters of comment submitted to you regarding the Washington State Parks and Recreation Commission's (WSPRC) application for a Shoreline Permit for the proposed Rocky Reach Trail project (SP #87). Jones & Stokes is agent to WSPRC for the application. Additionally, we have, since 1997, been assisting WSPRC with environmental analyses and preparation of permit applications for their proposed project.

As you are aware, numerous environmental documents prepared for the proposed project, have lead up to this Application for Shoreline Substantial Development Permit. These documents have addressed many issues, including those raised in letters of comment for this application. These documents have included:

- A NEPA Environmental Assessment published April 17, 2001 (Federal Highway Administration, Washington State Department of Transportation, and WSPRC) and Finding of No Significant Impact (FONSI) published November 9, 2001;
- Endangered Species Act Biological Assessment published July 2000 and letters of concurrence from the U.S. Fish and Wildlife Service January 17, 2001 and National Marine Fisheries Service (NOAA Fisheries) on February 26, 2001;
- Washington SEPA Determination of Nonsignificance and Adoption of Existing Environmental Document on November 19, 2001.
- U.S. Army Corps of Engineers Nationwide Permit 14 issued August 1, 2002; and
- Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA) issued March 21, 2003.

We are confident that these documents, along with the August 12, 2003 Shoreline Substantial Development Permit Application, will provide Douglas County and the Hearing Examiner, with the information needed to address the issues and to achieve an informed decision.

As a result of the environmental review for this project, the WSPRC has committed to a number of mitigations to reduce potential impacts of the project. These were presented as Attachment 3 in the JARPA submitted to the County and are reiterated at the end of this letter as Attachment 1 since many of those measures address issues raised in the letters of comment.

In the remainder of this letter, I will address comments and issues raised in the letters of comment received on this application. I will largely reference the location of our analysis of the issues in the reference documents previously prepared for the project.

How can State Parks be lead agency for the trail if it's serving a transportation purpose as stated in the JARPA ? Why is WSDOT not the lead agency? - *The SEPA Rules (WAC 197-11-926) state that "When an agency initiates a proposal, it is the lead agency for that proposal. If two or more agencies share in implementation of a proposal, the agencies shall by agreement determine which agency will be the lead agency." State Parks, WSDOT, and Chelan PUD No. 1 executed a SEPA Lead Agency Agreement that designates State Parks as the nominal lead agency under for this proposal.*

Why was "recreation" deleted from the project, and "transportation uses" substituted? - *Douglas County and WSDOT agreed that a major function of the trail is to provide an alternative transportation route for commuters traveling from home in Wenatchee and East Wenatchee, to work places in Baker Flats. This purpose is consistent with a primary funding source, a Federal ISTEAGrant, that is designed to promote alternative transportation opportunities. The highway purpose is also evident in the significant safety increase for motorists, bicyclists and pedestrians by removing bicyclists and pedestrians from the very busy State Road 2/97 and this use is consistent with the purpose of WSDOT's original land purchase. While the recreational aspects of the trail are an added benefit to the community, the increased safety for all our citizens, be they young, old or disabled, is the primary interest.*

The Recreational Overlay District, Conditional Use Permit, and Substantial Development Permit were deemed not necessary given the function of the trail as an alternative transportation route for commuters.

How does this project address the ever-increasing traffic congestion on Hwy 2/97? Would we not be better served by saving our money for traffic projects and not this trail? - *The trail would remove pedestrian and bicycle traffic from a 5-mile section of Hwy 2/97, plus be a direct link between Lincoln Rock State Park and the existing Apple Capital Loop Trail and the Wenatchee/East Wenatchee communities. It is anticipated that the addition of a safer, more user friendly route of travel will create a strong incentive for alternative transportation to both the Baker Flats area, and Rocky Reach Dam.. Trail fund sources are typically designated strictly for alternative transportation, and are not the same as funding sources used for highway construction.*

At a later date the trail may have to be moved to create a traffic corridor. Why are we putting this trail in with that prospect? - From page 27 of April 2001 NEPA EA: *"...the trail proposal is not connected to decisions regarding the future development of a state highway within the WSDOT right-of-way. The trail project is being designed according to the provisions of a pending land use agreement with WSDOT, so as not to preclude the possibility of the establishment of a new state highway." The trail design took highway construction potential into consideration so as not to preclude future construction if that becomes necessary.*

Why shouldn't this corridor be surplus, turned back to the owners and then put back on the tax rolls? Also, this trail will cause a potential loss of \$10 to 20 million dollars in potential lost tax value if the area is developed for homes. How is this justified? - *WSDOT has maintained that the corridor will continually be held for future highway development. Shoreline regulations could prohibit residential development in areas suitable for trail development. As documented in many other communities, having a trail associated with residential development is an amenity that greatly increases both sales and property value of the homes. In this situation, the trail will not prohibit any future development, but will serve as an excellent access for all the regions citizens to the Columbia River shoreline environment and provide an outstanding amenity for any adjacent home owners.*

This land is some of the best agricultural land in the area, growing the "sweetest peaches". How is the trail justified in taking that land? - From page 3 of the NEPA FONSI: *"...These orchards are on annually leased lands within the WSDOT-owned transportation corridor and on PUD lands on which WSDOT controls use rights." This land is already owned by WSDOT and is leased back to the Orchardists on an annual basis. The lease is structured in this fashion as it anticipates the eventual development of this corridor. These publicly owned lands should be utilized in a manner that provides the greatest good for the maximum number of citizens.*

The growers state there will be a significant economic impact to their orchard operations if this trail is installed. Is that true? - This issue was addressed in Attachment 5 page 5-3 of the November 9, 2001 FONSI. *The trees that would be removed are being grown on public land that is leased to orchardists on a year-to-year basis. The loss a maximum of 24 leased acres of orchard by 12 growers is certainly an impact to these individuals. However, the loss to a relatively small number of growers must be weighed against the public benefits to the citizens of the entire region. It should also be noted that many of these growers operate retail sales outlets, and these retail businesses could benefit from increased tourism associated with providing increased recreational opportunities in our region.*

From page 5-3 of the FONSI: "Douglas County recently had to weigh similar considerations when a landowner requested a Recreational-Overlay to construct an 18-hole golf course on prime and unique farmlands (Miller Recreation Overlay, RZ#01-01).

Rocky Reach Trail
City of East Wenatchee to Lincoln Rock State Park
Douglas County, Washington

Finding of No Significant Impact

Submitted Pursuant to 42 U.S.C. 4332 (2)(c) and WAC 197-11-330 by the:

U.S. Department of Transportation
Federal Highway Administration
and
Washington State Department of Transportation
and
Washington State Parks and Recreation Commission (Designated Local Agency)

11-08-01
Date of Approval

Jerry W. Alb for Jerry Alb
Jerry W. Alb, Director Environmental Services
Washington State Department of Transportation

11-9-01
Date of Approval

Megan Hall
Megan Hall, Eastern Region
Transportation and Environmental Engineer
Federal Highway Administration

11-08-01
Date of Approval

William C. Jolly
William C. Jolly, Environmental Program Manager
Washington State Parks and Recreation Commission

The following persons may be contacted for additional information concerning this document:

Daniel M. Mathis
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711 S. Capital Way, Suite 501
Olympia, WA 98501-0943
(360) 753-9480

Ernest Combs
WSDOT, NEPA Coordinator
P.O. Box 47300
Wenatchee, WA 98801-1007
(360) 705-7498

Mark C. Schulz
WSPRC, Environmental Specialist
2201 North Duncan Drive
Olympia, WA 98504-7300
(509) 662-0422

KEN STANTON
1ST DISTRICT

DANE KEANE
2ND DISTRICT

MARY HUNT
3RD DISTRICT

DOUGLAS COUNTY COMMISSIONERS

MEMORANDUM

TO: Interested Persons

FROM: Douglas County Board of Commissioners

DATE: February 5, 2008

SUBJECT: Public Hearing on the Rocky Reach Trail Applications

The Board of Commissioners has scheduled a public hearing on the Rocky Reach Trail proposal for Monday, February 25, 2008. The hearing will be held in the Commons of the Eastmont Junior High School, 905 8th Street NE, East Wenatchee, WA and will begin at 5:30 PM. The Board has been in the process of reviewing the record before the Hearing Examiner and will also be accepting written and oral testimony. To assure fairness and equity in the process, the Board will follow its normal hearing procedures with a few alterations to accommodate the interested persons and interested parties.

The procedure will be:

1. Hearing opening and administrative procedures.
2. Staff report.
3. Presentation by applicant and/or representatives (30 minutes maximum).
4. Presentation by Jack Feil, et al, and/or representatives (30 minutes maximum).
5. Testimony by interested persons.
6. Close of public testimony.
7. Deliberation/action by Board.

There are some guidelines all parties need to be aware of:

- This matter is before the Board as a result of an order by the Superior Court for Douglas County. The Board of Commissioners will not be accepting argument as to whether the matter is properly before the Board.
- The Washington State Parks and Recreation Commission is Lead Agency under the State Environmental Policy Act. Opinion, argument and assertion of decisions made or lacking pursuant to SEPA are not properly before the Board as the Washington State Parks and Recreation Commission is an independent governmental agency responsible for compliance with SEPA.

option, do a feasibility study and get on with it and leave us Orchardists to do our farming in peace.

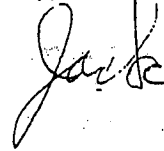
Yet another issue to consider is how will overlay affect the taxable value of the future development of riverfront property? Obviously it will consume a fair amount of land and result in potential loss of tax money. While this overlay is for the trail. What's to prevent another overlay for the whole two hundred foot wide five-mile long riverfront corridor? Should that happen it would be a terrible loss of high value taxable land by the County.

One has to wonder, why hurry to build this trail, there has to be a reason why Parks and the local trail supporters want it done as soon as possible. One can only speculate, but a good guess is that WSDOT will sooner rather than later have to relinquish ownership of the corridor lands to private ownership and with no trail, that's my guess. But that might be a blessing if Parks works it right.

Here's the deal; WSDOT sells the property to the adjacent orchardist with a proviso that the orchardist allows parks to construct the trail on the purchased land. Since the orchardist owns the land on which the trail is built, the liability issue from bodily injury goes away, that's huge. It's a win win situation, Parks gets their trail and the orchardist gets his land back, problem solved and everyone's happy.

I encourage you to take your time in making this important decision as this is a many faceted and complicated issue.

Your Truly, Jack Feil



Douglas County, Washington
Public Hearing/Public Meeting Sign-In

Signing this form is optional. Its use is to verify the public was in attendance at this public hearing or public meeting.

Hearing: RES TLS 08-09 Rocky Reach Trail
Date: Tuesday, February 25, 2008 at 5:30 PM
Location: Eastmont Junior High, East Wenatchee WA

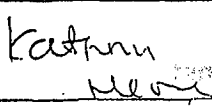

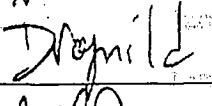

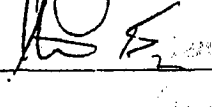

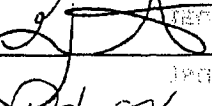
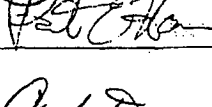
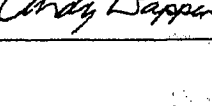
Do you wish to
comment -
Circle One

Favor or Against
Circle One

Name	Do you wish to comment - Circle One	Favor or Against Circle One
1 <u>MARK SCHULZ</u>	<u>yes or no</u>	<u>Favor or Against</u>
2 <u>Jonathan Lves</u>	<u>yes or no</u>	<u>Favor or Against</u>
3 <u>JOE TANDERSON</u>	<u>yes or no</u>	<u>Favor or Against</u>
4 <u>NINA Schult</u>	<u>yes or no</u>	<u>Favor or Against</u>
5 <u>Doug Pauly</u>	<u>yes or no</u>	<u>Favor or Against</u>
6 <u>BOB BUCERT</u>	<u>yes or no</u>	<u>Favor or Against</u>
7 <u>JAMES J. KLAUSER, Esq.</u>	<u>yes or no</u>	<u>Favor or Against</u>
8 <u>Brent Duder</u>	<u>yes or no</u>	<u>Favor or Against</u>
9 <u>Arthur Tanner</u>	<u>yes or no</u>	<u>Favor or Against</u>
10 <u>Roger Clute</u>	<u>yes or no</u>	<u>Favor or Against</u>
11 <u>Marsha Clute</u>	<u>yes or no</u>	<u>Favor or Against</u>
12 <u>Leann Williams</u>	<u>yes or no</u>	<u>Favor or Against</u>
13 <u>Eric Brandstrom</u>	<u>yes or no</u>	<u>Favor or Against</u>
14 <u>Gloria Kupperman</u>	<u>yes or no</u>	<u>Favor or Against</u>
15 <u>Bob Tarlette</u>	<u>yes or no</u>	<u>Favor or Against</u>
16 <u>DAVIDSON</u>	<u>yes or no</u>	<u>Favor or Against</u>
17 <u>DAVIDSON WAS</u>	<u>yes or no</u>	<u>Favor or Against</u>
18 <u>Brew Gaylord</u>	<u>yes or no</u>	<u>Favor or Against</u>
19 <u>Cathy Gaylord</u>	<u>yes or no</u>	<u>Favor or Against</u>
20 <u>Tom Feil</u>	<u>yes or no</u>	<u>Favor or Against</u>
21 <u>Jay Baird</u>	<u>yes or no</u>	<u>Favor or Against</u>

TO THE DOUGLAS COUNTY COMMISSIONERS

We the undersigned are users and staunch supporters of the Apple Capital Loop Trail. It is a treasured public asset and should be protected, maintained, and preserved at all costs. We also urge the Douglas County Commissioners to allow the Loop Trail to be extended to Lincoln Rock State Park and to take all steps necessary to support Washington State Parks in its efforts to construct this segment known as the Rocky Reach Trail. We believe the Rocky Reach Trail is an important transportation linkage and will enhance the safety and health of the users.

Signature	Printed Name	Address	E-mail Address
	Kathryn Meier	363 Stony Brook Lane 98801 Wenatchee	kate.laurence@hotmail.de
	ADAM VOGNILD	711 DEGABE ST E. WEN. WA 98802	highalpine@hotmail.com
	DONN VOGNILD	" " "	donnvog@yaho.com
	Sally Reed	4165 W. Eaglesch	Sally.Reed@gmail.com
	STEVE FRISS	304 CHATHAM HILL RD	
	Kirk Jacobson	570 Wild E. Van	
	EMILY ASENBAUGH	6414 Summit View Pl	EmilyAsenbaugh@hotmail.com
	PAT O'HARA	533 H. GILLAND P.	
	ANDY DAPPER	2332 WESTVIEW DR WENATCHEE 98801	

Please print this petition sign it, circulate it at work and among friends to gather the names of other trail users who support the Loop Trail and the proposed Rocky Reach Trail, and (by early January) return the signatures you've collected to: The Complete the Loop Coalition, P.O. Box 1192, Wenatchee, WA 98807

**STAFF REPORT
ROCKY REACH TRAIL EXTENSION**

TO: Douglas County Hearing Examiner
FROM: Douglas County Land Services Staff
RE: Rocky Reach Trail Extension, RO-06-01/SPD-06-02
DATE: September 1, 2006

I. GENERAL INFORMATION

Requested Action: An application submitted by the Washington State Parks and Recreation Commission for the construction of a public, multi-modal trail facility that serves both transportation and recreation functions and will follow the generally north-south oriented eastern shore of the Columbia River starting from the Odabashian Bridge and continuing north 5.1 miles to Lincoln Rock State Park within Washington State Department of Transportation right-of-way and property owned by Chelan County Public Utility District Number 1.

The application consists of a Site Planned Development Permit for the portion of the proposal located within the Tourist Recreation Commercial District (administrative review) and a Recreational Overlay District for the portion of the proposal located within the Low Residential, Commercial Agriculture 5 and Commercial Agriculture 10 Districts (quasi judicial review). The applicant is requesting a consolidated review process by which both applications will be reviewed simultaneously at the higher of the two reviews. For this application both applications will undergo a quasi judicial review.

The trail would be open during daylight hours only. From April 1 through June 30 of each year, trail use shall be limited to afternoon hours only and the proposed trail shall be closed during the morning hours. The applicant shall be responsible for closing the gates at all times when the trail is closed and take all reasonable actions to ensure at the time of closing that the trail is vacant of users.

Interpretive signs and directional markers would be placed along the trail. Approximately 32,000 square feet of native shrubs and grasses would be planted as project mitigation. The trail would be centered in an irregular corridor ranging from 15-25 feet wide, including a 10 foot asphalt top for the trail, plus a 2-foot edging (1-foot gravel shoulder on each side). Four viewpoints would be constructed as viewing areas and as possible rest areas for wheelchair users. Portions of the trail would require slope protection or geotextile application. Existing pump house facilities, located west of the paved trail, would be fenced and gated, with management by the landowner east of the WSDOT ownership line.

A buffer between active orchards and the trail is proposed. The buffer would be 100 feet in most places and no less than 60 feet. Where the buffer would be less than 100 feet, an alternative vegetated buffer would be established. Where farming would continue on both sides of the trail, fencing would be placed on both sides, if requested by the affected orchardist. In such cases, access for farming equipment would be provided by using swing gates that would close off the trail while farming equipment crosses. Additional setbacks between fencing and orchard trees would be provided on a case-by-case basis, as necessary to allow for machinery turnarounds.

Rocky Reach Trail
Staff Report
Page 1

Minor earthwork would be necessary, with maximum cut and fill depths of 2 to 3 feet. The trail would cross three intermittent drainage channels. The northern channels would be completely spanned by two bridges approximately 90 to 115 feet long, made of prefabricated steel supported by concrete abutments. An open bottom concrete box culvert would span the third channelized drainage.

Location: The property is located in a portion of Section 22, 15, 11, 10, and 2 within Township 23 North, Range 20 East, W.M., as well as Section 35 of Township 24 N., Range 20 East, W.M., Douglas County. The proposed Rocky Reach Trail would follow the generally North-South oriented eastern shore of the Columbia River, starting from the Odabashian Bridge and continuing North 5.1 miles to Lincoln Rock State Park. Douglas County Assessor Numbers for the subject property are 40400000001, 23201510002, 23201120011, 23201120010, and 23200210008.

II. SITE INFORMATION

Site Characteristics: Orchardists currently lease portions of the proposed trail corridor and buffer areas for agricultural production. The western edge of the WSDOT right-of-way ranges from zero to 1,900 feet from the shoreline, with most of the corridor ranging within 200-400 feet of the shoreline.

Significant wetland habitat is located to the west of the proposed trail associated with the Columbia River, including significant Cottonwood stands utilized by Bald Eagle and a number of other species. Three intermittent drainages cross the proposed corridor. Portions of the trail corridor would split orchards to the west and east sides of the trail. Orchards and dispersed single family residences are the predominant uses for properties located to the east. The Odabashian Bridge is located to the south, and the Chelan County PUD #1 Dam facilities and the Lincoln Rock State Park are generally located to the north of the trail corridor, except at the northern terminus of the proposed trail facility, where the Rocky Reach Dam is located to the east of the trail corridor.

Access: No new trailheads or parking areas will be created for this trail extension. This extension will be accessed by existing trailheads and the existing parking areas at Confluence State Park and Lincoln Rock State Park.

Zoning District Standards: The subject property is located within the Tourist Recreation Commercial (C-T), Low Residential (R-L), Commercial Agriculture 5 (AC-5), and Commercial Agriculture 10 (AC-10) zoning districts. The Tourist Recreation Commercial district allows trail systems as a Permitted Use subject to the approval of a Site Plan Development Permit. Recreational Overlay Districts are permitted in all districts in Title 18 except where specifically prohibited. Recreational Overlays are not listed as a prohibited use in the Low Residential, Commercial Agriculture 5, nor the Commercial Agriculture 10 districts.

Applicable provisions and requirements of D.C.C., Chapter 18.16, "General Regulations" include but are not limited to:

- Fencing standards
- Pedestrian/bicycle trail access.

Applicable provisions and requirements of D.C.C., Chapter 18.46, "Recreational Overlay District"

Applicable standards within this chapter include but are not limited to the following sections:

- Development Standards
- Performance Standards

Applicable provisions and requirements of D.C.C., Chapter 19.18B, "Wetlands"

The subject properties front the Columbia River. The wetland and riparian areas of the Columbia River are designated as critical areas and are regulated under Chapter 19.18B "Wetlands". Development, including vegetation removal, occurring within this area and associated buffer areas must develop a wetland management and mitigation plan consistent with the provisions of DCC 19.18B.035.

Applicable provisions and requirements of D.C.C., Chapter 19.18C, "Fish and Wildlife Habitat Conservation Areas"

The Columbia River is designated as critical areas and is regulated under Chapter 19.18C "Fish and Wildlife Habitat Conservation Areas". Development, including vegetation removal, occurring within this area and associated buffer areas must develop a fish and wildlife habitat management and mitigation plan consistent with the provisions of DCC 19.18C.037.

Applicable provisions and requirements of D.C.C., Chapter 19.18D, "Geologically Hazardous Areas"

Steep and severe building soils are indicated to be present on portions of the site. Additionally, the proposed trail would cross three intermittent drainages found on site. Steep and severe building soils are evaluated according to the determination process of Section 19.18D.040 D.C.C., which require a geologic site assessment by a qualified geologist or engineer.

III. COMPREHENSIVE PLAN:

The Greater East Wenatchee Area Comprehensive Plan establishes the following designations on the subject property as Tourist Recreation Commercial, Low Residential, Commercial Agriculture 5 acres, Commercial Agriculture 10 acres. The following goals and policies set forth in the comprehensive plan are relevant to this development:

OPEN SPACE AND RECREATION

GOAL: Provide recreational opportunities, facilities, and experiences which will allow all individuals the opportunity to improve the quality of their lives, while preserving and enhancing the existing resources of the area.

OS-2: Acquire and develop parks to meet the needs of the community and recreational visitors. Utilize public land close to prospective users and equitably distributed throughout the community to the greatest extent possible.

OS-13: Locate recreational trails on existing or proposed public lands such as utility easements, storm drainage facilities, or irrigation ditches.

OS-15: Public recreational areas should be located on public land which is readily accessible and designated for public access via existing roads or where roads can be reasonable extended to access the site. It should be located close to its prospective users and accessible to living areas by pedestrian walkways.

GOAL: To protect and preserve open spaces that are environmentally sensitive; serve as buffers between uses and link open space and park uses; and have scenic historical or cultural value.

OS-17: Provide a coordinated and connected system of open space throughout the planning area.

OS-18: Locate major parks and large open spaces to take advantage of natural processes (e.g. wetlands and drainage) and unusual landscape features (e.g. cliffs and bluffs) and to provide a variety of outdoor activities.

TRANSPORTATION

GOAL: Provide a balanced transportation system that meets the needs of the community by accommodating the movement of people, goods, and services at an optimum level of safety, economy and efficiency.

T-7: Ensure that current and future developments provide proper, adequate and safe access to the transportation system and facilities.

- Provision for adequate parking must be included for all development.
- Natural and artificial landscaping should be considered in the design of system facilities.
- Traffic calming techniques should be required when there are conflicts between transportation modes.

T-10: Encourage the development of a bicycle/walkway system for the City and the East Wenatchee area to allow for non-motorized travel; including linkages to transit routes.

T-11: Preserve right-of-ways for the future creation of non-motorized travel lanes and trails.

T-12: Wherever possible, develop pedestrian and bicycle facilities separate from the vehicle travel lanes.

T-16: Design transportation facilities within the Greater East Wenatchee Area that minimize adverse environmental impacts resulting from both their construction and use.

RESOURCE LANDS – AGRICULTURE

GOAL 1: Agricultural uses will be preserved, enhanced and maintained to the greatest extent possible outside of Urban Growth Areas (UGA).

A-1: The County will encourage the retention of agricultural lands of long-term commercial significance, including rangelands and will prevent haphazard growth into these areas.

A-3: Protect agricultural lands and activities from conflicting non-farm uses and influences.

A-4: Douglas County will encourage continued agricultural activities within areas designated as agricultural and preserve right-to-farm policies as set forth by the County. Ensure that public policies minimize disruption of agricultural activity.

A-15: Farm practices will be consistent with best management practices for the industry.

A-18: Encourage the control of noxious weeds in all affected areas of construction and development projects.

CRITICAL AREAS – WETLANDS

GOAL 1: Douglas County's wetlands will be protected to the greatest extent reasonable because they provide important functions that help define the quality of life in Douglas County.

POLICY CA-1: Protection and preservation of wetlands shall be preferred to alteration and mitigation of impacts to wetlands.

POLICY CA-3: Wetlands will be identified according to the methodology described in the Washington State Wetlands Identification and Delineation Manual, 1997, publication #96-94, as amended.

POLICY CA-4: Wetlands shall include riparian areas for the policies and development regulations. Within Douglas County, the arid climate and vegetation are such that wetlands and riparian areas are so similar, and distinguishable on the landscape that grouping them within the policies and development ordinances is appropriate for the protection of their functions and values.

POLICY CA-6: Wetlands will be protected as much as reasonable from alterations due to land use changes that may create adverse impacts to the wetland.

POLICY CA-11: Projects containing a wetland should submit a comprehensive wetland mitigation plan that includes sufficient monitoring and contingencies to ensure natural wetland persistence.

POLICY CA-13: A wetland buffer area of adequate width will be maintained between wetlands and adjacent new development to protect the functions and integrity of the wetland. The ultimate width of the established buffer should be based on the function and sensitivity of the wetland, the characteristics of the existing buffer, the potential impacts associated with the adjacent and proposed land use, as well as other existing regulations which may control the proposed activity.

CRITICAL AREAS – FISH AND WILDLIFE HABITAT CONSERVATION AREAS

GOAL 2: Protect fish and wildlife habitat areas as an important natural resource for Douglas County, particularly in regard to their economic, aesthetic and quality of life values.

POLICY CA-15: Impacts of new development on the quality of land, wildlife and vegetative resources will be considered as part of the environmental review process and require any appropriate mitigating measures. Such mitigation may involve the retention and/or enhancement of habitats.

POLICY CA-16: The maximum amount of vegetation should be maintained in its natural state and be disturbed only as minimally necessary for the development. Disturbed areas should be re-vegetated with native vegetation as soon as possible. Re-vegetation will be maintained in good growing conditions, as well as being kept free of noxious weeds.

POLICY CA 17: If a development proposal is located in or near a habitat conservation area shown on the reference maps, a consultation and subsequent mitigation measures, if needed, should be encouraged from the WDFW or other appropriate agency.

POLICY CA-20: Proper riparian management that maintains existing riparian habitat and is consistent with best agricultural management practices should be encouraged.

POLICY CA-21: Ensure that land uses adjacent to naturally occurring wetlands and other fish and wildlife habitat areas will not negatively impact the habitat areas. If a change in land use occurs, adequate buffers will be provided to the habitat areas.

POLICY CA-22: Activities allowed in fish and wildlife habitat conservation areas and open space will be consistent with the species located there, including all applicable state and federal regulations and/or best management practices for the activity regarding that species.

CRITICAL AREAS – GEOLOGICALLY HAZARDOUS AREAS

GOAL 5: The County will provide appropriate measures to either avoid or mitigate significant risks that are posed by geologic hazard areas shall be documented during the review of development applications.

POLICY CA-43: Potential impacts and alternative mitigation measures to eliminate or minimize the impacts in identified geologic hazard areas shall be documented during the review of development applications.

POLICY CA-44: Development proposals should be evaluated to determine 1) whether the proposal is located in a geologic hazard area, 2) the project's potential impact on geologic hazard areas, and 3) the potential impact of geologic hazards on the proposed project.

POLICY CA-50: All proposed development projects located within a geologic hazard area, or that have the potential to adversely affect the stability of one of these areas, may be required to provide studies performed by qualified consultants describing the existing nature of the hazard and necessary safety precautions. The subsequent report from the geo-technical engineer and/or geologist should clearly identify the risk of damage from the project, both on-site and off-site, whether the proposal increases the risk of occurrence of the hazard, and whether the proposal has incorporated measures to eliminate or reduce the risk of damage due to the hazard.

IV. SHORELINE REGULATIONS

The subject property is located within 200 feet of the Columbia River and its associated wetlands and therefore is subject to Shoreline Regulations. On January 12, 2004 the Douglas County Hearings Examiner approved a shoreline substantial development permit for the proposed Rocky Reach Trail Extension. This approval identified that the proposed project is consistent with the Shoreline Management Act, Douglas County Shoreline Master Program, and the Shoreline Design Area Plan.

The shoreline permit decision was appealed to the State Shorelines Hearings Board on January 26, 2004. A separate appeal was filed in Superior Court under the Land Use Petition Act (LUPA) on January 26, 2004. On March 4, 2005, the State Shoreline Hearings Board affirmed the decision by the Douglas County Hearings Examiner. The State Shoreline Hearings Board decision was then appealed to the State Superior Court. On September 13, 2005, the Superior Court affirmed the Shoreline Hearings Board

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decision and ruled on the LUPA appeal, directing Washington State Parks and Recreation Commission to apply for and obtain land use permits as may be required by the Douglas County Code.

V. ENVIRONMENTAL REVIEW

The Washington State Parks and Recreation Commission is the lead agency for environmental review for the project application, consistent with WAC 197-11-922. The involvement of the Federal Highway Administration and the Washington State Department of Transportation in this project triggered a requirement that the applicant conduct an environmental analysis under the National Environmental Policy Act, (NEPA). Upon conclusion of the NEPA process, a finding of No Significant Impact (FONSI), was issued on November 9, 2001. On November 19, 2001, the Washington State Parks and Recreation Commission published a Determination of Nonsignificance (DNS) and Adoption of Existing Environmental Document.

The Washington State Parks and Recreation Commission, as lead agency, is responsible for environmental determination. Lead agency status and procedural compliance are not issues before the hearing examiner.

VI. AGENCY AND PUBLIC COMMENTS:

Applicable agencies have been given the opportunity to review this proposal. Agency comments have been included as Appendix A. Public comment from five individuals was submitted on this proposal at the time of staff review those comments have been included as Appendix B.

VII. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, shoreline master program, applicable county code, public and agency comments, and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Comprehensive plan consistency:

Comprehensive plans are adopted by the Board of County Commissioners as official county policy. Policies within the Greater East Wenatchee Area Comprehensive Plan support the expansion of the trail system.

The Open Space and Recreation Chapter specifically lists the extension of the current trail system north to connect with Lincoln Rock State Park as a facility identified as necessary to meet the recreation needs for the 20 year growth period. The first goal is to provide recreational opportunities, facilities, and experiences which will allow all individuals the opportunity to improve the quality of their lives, while preserving and enhancing the existing resources of the area. Policy guidance in this chapter supports the location of recreational trails on existing or proposed public lands and encourages a coordinated and connected system of open space throughout the planning area. Policy OS-18 encourages the location major parks and large open spaces to best take advantage of natural processes and unusual landscape features and to provide a variety of outdoor activities. The proposed trail extension extends along the Columbia River taking advantage of the views and natural habitat that the river offers.

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A goal of the Transportation Chapter is to provide a balanced transportation system that meets the needs of the community by accommodating the movement of people, goods, and services at an optimum level of safety, economy and efficiency. Policy also encourages the preservation of rights-of-way for the future creation of non-motorized travel lanes and trails, as well as requiring that wherever possible, develop pedestrian and bicycle facilities separate from the vehicle travel lanes.

Agriculture represents a significant economic segment in Douglas County. The goals and policies set forth in this element recognize and acknowledge the importance of agricultural lands and activities. It is important to preserve and encourage agricultural activities as viable operations and to protect them from the encroachment of incompatible uses, particularly through innovative development techniques. The plan encourages recognition of the inherent characteristics of agricultural practices and directs the county to ensure that public actions are managed to minimize disruption of agriculture. The concepts of expanded setbacks, buffering and resource disclosure statements stem from the plan's deference to agriculture when considering potentially conflicting uses.

The first goal of the Agriculture section of the Resource Lands Chapter is to preserve, enhance and maintain agricultural uses to the greatest extent possible outside Urban Growth Areas. Policy guidance for agricultural areas requires the protection of agricultural lands and activities from conflicting non-farm uses and influences and assurance that public policies minimize the disruption of agricultural activity. Additional policy guidance encourages the control of noxious weeds in areas affected by construction and development projects.

The Greater East Wenatchee Area Comprehensive Plan identifies the need to improve recreation and open space. This project is specifically identified in the plan for that purpose. Enhancement of the connectivity and diversity of the transportation system is also identified as important component. Additionally, the plan places significant importance on the protection of agricultural lands. By policy, the plan establishes that public policies should minimize disruption of agricultural activities. Innovative techniques are suggested in the plan to minimize impacts to and protect agricultural lands from potentially conflicting or incompatible uses.

The proposed trail has incorporated many different techniques to minimize potential conflicts between the trail and agricultural uses. Examples of these techniques are: enhanced setbacks of the trail from offsite agricultural operations, enhanced buffers in areas where enhanced setbacks are not possible, gates at both ends of the trail in the agricultural area which will be secured during important agricultural operation periods by the applicant; additional fencing of agricultural infrastructure (i.e. pump houses) to be maintained by the applicant; additional security by the applicant to minimize impacts of the trail users on agricultural areas; and a plan to minimize noxious weeds in the trail area. The applicant has provided significant design features and an ongoing commitment to mitigate the potential impacts on surrounding agricultural uses.

The proposed project appears consistent with the Greater East Wenatchee Area Comprehensive Plan.

Consistency with Chapter 18.16, "General Regulations", D.C.C.:

The application proposes fencing in various areas along the trail. All fencing must meet the requirements of Chapter 18.16.060. The proposed application is for a pedestrian/bicycle trail. The trail will connect the existing trail system to Lincoln Rock State Park. The trail is designed to allow access for all members of the community. The proposed dimensions exceed the requirements of Section 18.16.150(G). Section 18.16.150(I) discourages the location of pedestrian/bicycle trails in agricultural areas. Under normal development practices in agricultural areas the discouragement of trails is appropriate to minimize conflicts with agricultural operations. However, Section 19.18.035 specifically authorizes the location of trails within designated resource areas subject to the minimum standards of the Section. Additionally, the trail proposed in this application has been specifically authorized by the comprehensive plan in order to serve regional recreational and transportation needs. As conditioned, the proposal appears consistent with the provisions of this chapter.

Consistency with Chapter 18.46, "Recreational Overlay District" D.C.C.:

Recreational Overlay Districts (R-O's) are permitted in all districts within Title 18, unless specifically prohibited. R-O's are not prohibited in the zoning districts located on the subject property. Recreational trail systems are a permitted use in R-O's. The proposed project area is greater than the minimum 5 acres. A detailed narrative addressing the provisions of this chapter has been provided by the applicant, starting on page 18 of the consistency analysis included with the application materials.

Section 18.46.080(B) authorizes the review authority to reduce the agricultural setback to 60 feet with an enhanced alternative buffering method. A discussion of the proposed enhanced buffering is included on pages 37 and 38 of the consolidated permit application and Figures 7 and 8 of the application plan set.

The applicant has identified that the existing 730+ parking spaces serving the parks and trail heads are sufficient and therefore the proposed trail system does not include new trailheads or additional parking. Two accesses are proposed to the trail extension which is consistent with the requirement. Trash receptacles are currently provided at the existing state parks. New receptacles are proposed at the view point areas. Trash pick up will follow the current schedule at Lincoln Rock State Park. An emergency response/fire safety plan has been included with the application materials. Potable water and restroom are currently available at the Confluence and Lincoln Rock State Parks. No new facilities are proposed.

As conditioned, the proposal appears consistent with the provisions of this chapter.

Consistency with the provisions and requirements of D.C.C., Chapter 18.64 "Site Planned Development Permit"

All application materials and plans required by this chapter have been submitted. A detailed narrative has been provided by the applicant starting on page 24 of the consistency analysis included with the application materials.

As conditioned, the proposal is consistent with the requirements of this chapter.

Agency comments:

Agency comments from the Douglas County Transportation Services Department, Douglas County Land Services – Building, the Chelan – Douglas Health District, the City of East Wenatchee, East Wenatchee Water District, Douglas County Solid Waste Programs, Douglas County Fire District #2, Chelan County PUD have identified mitigation or project design required for the project. These comments have been included as conditions of approval to address these agency concerns.

VIII. RECOMMENDATION

As conditioned below, this application does not appear to be detrimental to the general public health, safety or welfare and meets the basic intent and criteria associated with Title 18, 19 and 20 of the Douglas County Code and the Greater East Wenatchee Area Comprehensive Plan. Staff Recommends approval of RO#06-01 and SPD#06-02, subject to the following findings of fact and conditions:

Suggested Findings of Fact

1. The applicant is the Washington State Parks and Recreation Commission. Property owners signing the application are the Washington State Department of Transportation and Chelan County Public Utility District #1.
2. General Description: An application submitted by the Washington State Parks and Recreation Commission for the construction of a public, multi-modal trail facility that serves both transportation and recreation functions and will follow generally north-south oriented eastern shore of the Columbia River starting from the Odabashian Bridge and continuing north 5.1 miles to Lincoln Rock State Park within Washington State Department of Transportation right-of-way and property owned by Chelan County Public Utility District Number 1.
3. The property is located in a portion of Section 22, 15, 11, 10, and 2 within Township 23 North, Range 20 East, W.M., as well as Section 35 of Township 24 N., Range 20 East, W.M., Douglas County. The proposed Rocky Reach Trail would follow the generally North-South oriented eastern shore of the Columbia River, starting from the Odabashian Bridge and continuing North 5.1 miles to Lincoln Rock State Park. Douglas County Assessor Numbers for the subject property are 40400000001, 23201510002, 23201120011, 23201120010, and 23200210008.
4. The subject property is located within the Greater East Wenatchee Planning Area.
5. The Comprehensive Plan Designation is Tourist Recreation Commercial, Residential Low, Commercial Agriculture 5 acres, and Commercial Agricultural 10 acres.
6. The proposal is located in an area designated as Agricultural Resource, Critical Areas and Essential Public Facilities by the Greater East Wenatchee Area Comprehensive Plan.
7. The subject property is located in the Tourist Recreation Commercial (C-TR), Residential Low (R-L), Commercial Agriculture 5 acres (AC-5), and Commercial Agricultural 10 acres (AC-10) zoning districts. Trail systems are an outright permitted use in the Tourist Recreation Commercial district. Recreational trail

- systems are allowed in the Residential Low, Commercial Agriculture 5 and Commercial Agriculture 10 districts via a Recreational Overlay District permit.
8. Chapter 2.13 of the Douglas County Code authorizes the Douglas County Hearing Examiner to review and take action on applications to create a recreational overlay district.
 9. On January 12, 2004 the Douglas County Hearings Examiner approved a shoreline substantial development permit for the proposed Rocky Reach Trail Extension. The shoreline permit decision was appealed to the State Shorelines Hearings Board on January 26, 2004. A separate appeal was filed in Superior Court under the Land Use Petition Act (LUPA) on January 26, 2004. On March 4, 2005, the State Shoreline Hearings Board affirmed the decision by the Douglas County Hearings Examiner. The State Shoreline Hearings Board decision was then appealed to the State Superior Court. On September 13, 2005, the Superior Court affirmed the Shoreline Hearings Board decision and ruled on the LUPA appeal, directing Washington State Parks and Recreation Commission to apply for and obtain land use permits as may be required by the Douglas County Code.
 10. On August 1, 2002, the U.S. Army Corps of Engineers issued a Nationwide Permit 14 for a box culvert crossing at Station 66+60 (River Mile 470.5) on the Rocky Reach Trail.
 11. On January 30, 2003, the Washington State Department of Ecology issued a letter waiving individual water quality certification requirements for the culvert crossing subject to the Corps of Engineers jurisdiction under the Federal Clean Water Act.
 12. On April 18, 2006, the Washington department of Fish and Wildlife issued a Hydraulic Project Approval (HPA) for bridge and culvert installation, native revegetation and site restoration.
 13. In April, 2001 the Washington State Parks and Recreation Commission, in conjunction with the U.S. Department of Transportation Federal Highway Administration and the Washington State Department of Transportation issued a National Environmental Policy Act Environmental Assessment for the proposed trail extension. After review and comment the U.S. Department of Transportation Federal Highway Administration issued a Finding of No Significant Impact in November 2001.
 14. A Biological Assessment was prepared for the proposed trail project in July 2000. Concurrence letter were issued by the U.S. Fish and Wildlife Service on January 17, 2001 and the National Marine Fisheries Service on February 26, 2001. An addendum to the biological Assessment was issued evaluating the project relative to the 2005 re-designation of Critical Habitat, evolutionary significant unit and distinct population segment stock definitions.
 15. The Greater East Wenatchee Area Comprehensive Plan identifies the need and roughly discloses a general alignment of a trail extending from the existing trail at Odabashian Bridge north to Lincoln Rock State Park.
 16. Policies contained within the Greater East Wenatchee Area Plan speak to trail recreation benefits, the provision of a balanced transportation system and a trail system throughout the East Wenatchee area.
 17. By policy, the Greater East Wenatchee Area plan places significant importance on the protection of agricultural lands; establishes that public policies should minimize disruption of agricultural activity; and suggests that innovative

techniques be utilized to minimize impacts to agricultural lands of long term commercial significance.

18. The applicant has proposed a variety of measures within the project design and operation to address agricultural impacts. These include but are not limited to enhanced setbacks, enhanced buffers in areas where enhanced setbacks are not possible, gates at both ends on the agricultural area which will be secured during important agricultural operation periods, additional fencing of agricultural infrastructure (i.e. pump houses), additional security by the applicant to minimize impacts of the trail users on agricultural areas, and a plan to minimize noxious weeds in the trail.
19. Comments from reviewing agencies have been considered and addressed where appropriate.
20. The Washington State Parks and Recreation Commission is lead agency, responsible for compliance with the State Environmental Policy Act, (SEPA).
21. The Washington State Parks and Recreation Commission published a determination of Nonsignificance (DNS) and Adoption of Existing Environmental Document, on November 19, 2001.
22. Public notice of application for this proposal and notice of the public hearing was provided in conformance with Title 14 Douglas County Code.
23. Surrounding property owners were given the opportunity to comment on the proposal, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
24. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
25. Section 18.46.080(B) authorizes the review authority to reduce the agricultural setback to 60 feet with an enhanced alternative buffering method.
26. The subject property is located on the shoreline of the Columbia River and contains wetland areas regulated under the provisions of chapter 19.18B Critical Areas-Wetlands..
27. The trail corridor is not located within wetland boundaries and is located within wetland buffers. Mitigation for impacts to wetland buffers were established at a ratio of 1:1 within the wetland management and mitigation provisions.
28. Soil mapping from the USDA Natural Resource & Conservation Service indicate the presence of steep and severe building soils on a portion of the subject properties. A Geotechnical Report, from Hong West & Associates, Inc., dated August 26, 1996 and revised December 3, 1997 was submitted by the applicant.
29. Section 19.18.035 establishes that public trail facilities may be authorized within designated resource lands and critical areas subject to the minimum standards of the Section.
30. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

Suggested Conclusions:

1. As conditioned, the project meets the goals and policies as set forth in the Greater East Wenatchee Area Comprehensive Plan.
2. Based upon the letters of concurrence and permit approvals from federal and state agencies this proposal is consistent with applicable federal and state laws and regulations as conditioned.
3. As conditioned, potential impacts of the project can be mitigated.

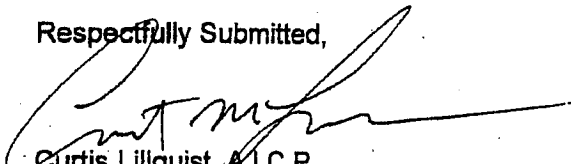
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4. The application is consistent with the requirements of DCC 19.18.035, relating to trails and trail related facilities.
5. Public use and interests will be served by approval of this proposal.
6. As conditioned, the proposal is consistent with Title 18 "Zoning", Title 19 "Environment", and Title 20 "Development Standards", of the Douglas County Code.

Suggested Conditions of Approval

1. The project shall proceed in substantial conformance with the plans and application materials of file dated March 27, 2006 and July 5, 2006 except as amended by the conditions herein.
2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
3. The construction of the trail and associated facilities shall proceed in conformance with the Geotechnical Report from Hong West & Associates, dated August 26, 1996 and revised on December 3, 1997.
4. Prior to construction, the application must contact the East Wenatchee Water District to verify that the trail location does not conflict with the existing water main easement for the regional water main.
5. The applicant shall include pet waste disposal with the proposed trash receptacles.
6. The surface of the trail shall provide adequate support for a two axle emergency vehicle weight of 18,000 pounds.
7. No permanent structures shall be placed within the NESC Safety Zone of the 115kV transmission lines. This zone is located 50 feet from both sides of the middle conductor
8. The SPD permit shall remain valid after five years after the notice of action was issued, provided that physical improvements consistent with the permit have been commenced within three years of the date of the notice of action.

Respectfully Submitted,



Curtis Lillquist, A.I.C.P.
Senior Planner

Attachments

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Douglas County Hearing Examiner
Andrew L. Kottkamp, Hearing Examiner

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Douglas County TLS

IN THE MATTER OF

RO-06-01 and SPD 06-02
Rocky Reach Trail Extension

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FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND
CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on September 12, 2006, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. INTRODUCTION / PROCEDURAL DEVELOPMENTS

- 1.1 This is an application submitted by the Washington State Parks and Recreation Commission for the construction a public, multi-modal trail facility that will follow generally north-south oriented eastern shore of the Columbia River starting from the Odabashian Bridge and continuing approximately 5.1 miles north to Lincoln Rock State Park within Washington State Department of Transportation right-of-way and property owned by the Chelan County Public Utility District Number 1.
- 1.2 On January 12, 2004, the Douglas County Hearing Examiner approved a shoreline substantial development permit for this proposed Rocky Reach Trail Extension. The approval identified that the proposed project was consistent with the Shoreline Management Act, the Douglas County Shoreline Master Program and the Shoreline Design Area Plan.
- 1.3 This decision was appealed to the State Shoreline Hearings Board on January 26, 2004. Additionally, a separate appeal was filed in Douglas County Superior Court under the Land Use Petition Act on January 26, 2004.
- 1.4 On March 4, 2005, the State Shoreline Hearings Board affirmed the decision of the Douglas County Hearing Examiner.
- 1.5 The State Shoreline Hearings Board decision was then appealed to the Douglas County Superior Court.

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- 1.6 On September 13, 2005, Douglas County Superior Court affirmed the Shoreline Hearings Board decision and ruled on the Land Use Petition Action appeal, directing the Washington State Parks and Recreation Commission to apply for and obtain land use permits as may be required by the Douglas County Code.
- 1.7 On or about March 23, 2006, the Washington State Parks and Recreation Commission filed a land development permit application for a recreational overlay designation for property covered by the Rocky Reach Trail Extension.
- 1.8 An open record public hearing on this application was held on September 12, 2006. At this hearing, the Hearing Examiner took testimony and admitted exhibits into the record.
- 1.9 In lieu of direct cross-examination by Mr. Jack Feil's attorney against the applicant and Douglas County Transportation and Land Services personnel, Mr. Feil's attorney agreed to submit written questions to the applicant and to Douglas County Transportation and Land Services personnel on or before September 20, 2006.
- 1.10 The Hearing Examiner ordered that the responses to those questions must be provided by September 29, 2006.
- 1.11 The Hearing Examiner believes that he made it very clear that no additional public comment or testimony would be admitted during this interim period.
- 1.12 The Hearing Examiner further ordered that his decision would be made by October 13, 2006.
- 1.13 Unfortunately, additional public comments were received in violation of this order apparently due to confusion in interpretation of the Hearing Examiner's oral ruling at the September 12, 2006, hearing.
- 1.14 In order to clarify the record and to admit into the record these public comments that were submitted after September 12, 2006, but before September 29, 2006, the Hearing Examiner issued an order dated October 11, 2006.
- 1.15 In that order, the Hearing Examiner is very clear that no public comment from Mr. Feil or any other member of the public submitted after September 29, 2006, would be admitted into the record. The Hearing Examiner opened the public record from September 29, 2006, through October 20, 2006, for the sole purpose of allowing the applicant to provide any additional rebuttal evidence that they may wish to submit.

- 1.16 The Hearing Examiner further ordered that at 5:00 p.m. on October 20, 2006, the public record in this matter would close.
- 1.17 The Hearing Examiner made it very clear and ordered that all documents submitted by Mr. Feil, by members of the public and by attorneys in this matter up to September 29, 2006, would be included as a part of the record.
- 1.18 The Hearing Examiner further ordered, and made it very clear, that the reopening of the record from September 29, 2006, through October 20, 2006, was for the sole and limited purpose of allowing the applicant to provide rebuttal evidence, should they so desire. The record was not reopened for additional public comment, or argument.
- 1.19 Finally, the Hearing Examiner ordered that his decision would be made on or before November 3, 2006.

II. ITEMS IN THE RECORD

- 2.1 At the open record public hearing on September 12, 2006, the Hearing Examiner admitted the entire Planning Staff file for this matter into the record as it existed up to September 12, 2006.
 - 2.1.1 To be very clear, Douglas County Transportation and Land Services compiled a list of public comments received since September 6, 2006, which were compiled by memorandum dated September 6, 2006, and a second memorandum dated September 12, 2006, all of the items listed within both memorandums are included in the public record.
- 2.2 Additionally, the Hearing Examiner heard testimony from the following individuals:
 - 2.2.1 Mark Gillespie, of the Washington State Parks
 - 2.2.2 Bill Frazier, Eastern Region Park Manager and Project Coordinator
 - 2.2.3 Jon Ives, of Jones & Stokes, identified as the authorized agent in application materials and the environmental consultant
 - 2.2.4 Nina Villalobos, of Wenatchee
 - 2.2.5 David Zamora, of Wenatchee
 - 2.2.6 Dr. Walter Newman, of Wenatchee
 - 2.2.7 Karen Russell, of East Wenatchee
 - 2.2.8 Robert Parlette, of Wenatchee
 - 2.2.9 Andy Dappen, of Wenatchee
 - 2.2.10 Allison Haug, of Wenatchee
 - 2.2.11 Doug Pauley, of Wenatchee
 - 2.2.12 David Steipe, of Wenatchee
 - 2.2.13 Mary Cook, of Wenatchee
 - 2.2.14 Steve Godfrey, of Cashmere
 - 2.2.15 Mike Zanol, of East Wenatchee

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3 COMPLIANCE WITH DOUGLAS COUNTY CODE

This section outlines the relevant Douglas County Code sections applicable to the Rocky Reach Trail project and describes the specific aspects of the trail relevant to each code. Codes are noted in italic.

3.1 Title 18 ZONING

3.1.1 Chapter 18.16 GENERAL REGULATIONS

DCC 18.16.150 Pedestrian and/or bicycle trail access

Trail systems shall provide continuity of public access and/or facilitate their eventual connection to other areas incrementally through time.

The proposed Rocky Reach Trail would provide public access, as well as scenic and educational value, and would link the Lincoln Rock State Park and the existing Apple Capital Loop Trail south of the Odabashian Bridge.

E. Over fifty percent of the required trail shall be located within open space areas, between lots or physically separated from vehicles on roadway systems.

The entire length of the proposed trail would be separated from vehicles on roadway systems.

G. The dimensions of the linkage system shall have a minimum easement width of ten feet with a minimum width of six feet improved with gravel, asphalt, or other similar-all weather surface materials.

The trail would be centered in an irregular corridor ranging from 15 to 25 feet wide, including a 10-foot asphalt top for the trail, plus a 2-foot edging (1-foot gravel shoulder on each side). The trail corridor would include viewpoints at four locations (stations 12+60.00, 110+60.00, 157+00.00, and 222+00.00) and rest areas with benches at four locations (stations 21+55.00, 214+00.00, 217+00.00, and 219+40.00). (See Figures 3 through 6 and Exhibit 1, sheets L1, L8, L12, L16, and D1 of the DCC consolidated permit application).

I. Pedestrian/bicycle access corridors shall be discouraged in areas designated as agricultural lands of long-term commercial significance.

As of the fall of 2000, the proposed trail location (with buffers) contained approximately 24 acres of irrigated fruit orchard. The Rocky Reach Trail project would require the conversion of approximately 24 acres of active orchard to transportation and recreational uses. The orchards are on annually leased lands within the WSDOT-owned transportation corridor and on PUD lands on which WSDOT controls the use rights. The proposed Rocky Reach Trail would require the establishment of a Recreational Overlay (R-O) District along the entire length of the proposed trail to ensure consistency with the

Douglas County Comprehensive Plan. The width of the Recreational Overlay would be 20 feet, or 10 feet on each side of the centerline of the trail right-of-way, with the overlay wider at designated viewpoints and rest areas along the trail. Applications for the establishment of a R-O District require County quasi-judicial review under DCC 14.10.040.

The Rocky Reach Trail project includes a commitment for buffering between the trail facility and surrounding land uses, including agriculture (see discussion of consistency with buffer requirements in DCC 18.46.070 - Development standards.). The Rocky Reach Trail project also includes a commitment to install interpretive signage where the trail enters agricultural areas informing trail users of the adjacent agricultural uses.

Where farming would continue on both sides of the trail, fencing would be placed on both sides, if requested by the affected orchardist. In such cases, access for farming equipment would be provided by using swing gates that would close off the trail while farming equipment crosses. Additional setbacks between fencing and orchard trees would be provided on a case-by-case basis, as necessary to allow for machinery turnarounds.

As conditions of approval for the Shoreline Substantial Development Permit, the Douglas County Hearing Examiner specified the following requirements regarding trail opening and closure:

- "The applicant shall designate and enforce specific times for the opening and closing of the proposed trail. The applicant may designate different opening and closing times for standard time periods and daylight savings time.
- The specific trail opening and closure times shall be posted at all designated access sites in standard time and daylight savings time.
- From April 1 through June 30 of each year, trail use shall be limited to afternoon hours only and the proposed trail shall be closed during the morning hours. This provision may be altered only with the concurrence of the Washington State Tree Fruit Experiment Station and the Washington State University Agricultural Extension Service.
- The applicant shall take all reasonable actions to ensure, at the time of trail closure, that the trail is vacant of users.
- The applicant shall close all gates during all times that the trail is closed pursuant to this decision."

These conditions for approval will be part of the operations plan for the trail.

Potable water and restrooms will be available at the trailheads at Lincoln Rock and Wenatchee Confluence State Parks. Irrigation for the plantings will be provided by trucks equipped with water tanks. Irrigation during the first year establishment period for the vegetative plantings will be the responsibility of the landscape contractor. Any irrigation requirements thereafter will be provide by WSPRC, although such irrigation needs will be limited since all vegetation to be planted will be acclimated to the soils and dry conditions along the trail.

J. No sound-amplifying device or speaker emitting loud and raucous noise shall be operated closer than two thousand five hundred feet from any school, church or residence, unless the governing body and/or owner of each such use has agreed in writing to waive this prohibition. (Ord. TLS 97-10-71B Exh. F (part))

The project involves no amplified sounds.

18.46.080 Performance standards

A. General Character. Development within the R-O district shall be designed with an interior road network, perimeter landscaping or buffering mechanisms.

No roads would be constructed as part of the proposal. Landscaping and buffering are described below.

B. Buffering. When a use, lot, or parcel is situated within the R-O district and adjoins an agricultural district, all uses, including the storage of materials shall be setback a minimum of one hundred feet from the property line. Buildings, structures and/or uses may setback a minimum of sixty feet from the property line, provided the applicant submits an enhanced alternative buffering method for approval by the review authority.

Approximately 4.6 miles of the 5.1-mile trail surface would maintain at least a 100-foot buffer from the edge of the trail facility and surrounding land uses, including agriculture. Approximately 2,400 lineal feet of the entire 5.1-mile trail length would have buffers less than 100 feet wide, and therefore an enhanced alternative buffering method is proposed for consideration by Douglas County, per DCC 18.46.080. (See Figure 3 of the DCC consolidated permit application and Sheet D2, Exhibit 1 accompanying the application) Decisions regarding alternative buffering methods are the responsibility of the Douglas County Hearing Examiner (DCC Chapter 2.13.070 Examiner – Authority and duties). Proposed and landscaping meet the minimum provisions as set forth in DCC Chapter 20.40. A vegetative buffer would not be required where the width between the trail facility and surrounding land uses is greater than 100 feet. In no instance would the buffer width be less than 60 feet.

C. Resource/Critical Areas. It shall be the responsibility of the operator and/or proprietor of any permitted use to provide, analyze and make adequate provisions for the protection of groundwater, wetlands, sensitive wildlife species, resource lands, and other critical areas in accordance with DCC Title 19. Development located within the above areas shall be evaluated for impacts and may be limited in intensity, location and/or prohibited if found to measurably degrade the integrity of the resource or critical areas.

The project would not degrade the integrity of any resource or critical area defined under DCC Chapter 19.18, Resource Lands/Critical Areas.

The project would have negligible effects on groundwater. Site soils are sandy and very well drained, so that stormwater runoff would infiltrate within feet of leaving the paved surface of the trail (see Appendix E, Section 7.2.4, and Appendix H, Section 7.2.6).

Most of the trail would lie within the shoreline zone of the Columbia River and associated buffers protected under the Douglas County critical areas regulations. Of the 5.1 miles of proposed trail, approximately 4.4 miles (86.1%) would occur within either 100 feet of the Columbia River OHWM or within 100 feet of riparian habitat designated as Priority Habitat by the Washington Department of Fish and Wildlife (WDFW). Approximately 0.7 mile (13.9%) of the trail would lie beyond 100 feet of the OHWM or riparian habitat. All of the 0.7 mile is located at the north end of the trail on Douglas County PUD land and within Lincoln Rock State Park. Approximately 75% of the trail alignment is within areas under disturbance or previously disturbed by agricultural activities. No riparian vegetation would be removed by the project. The only native plant community affected by the trail would be an upland area dominated by sparsely vegetated sand dunes in Baker Flats approximately two miles north of the Odabashian Bridge. Native shrub-steppe vegetation occurs in this area. The trail would cross this area but not substantially change the condition of the dunes, which have been severely disturbed by off-road vehicular activity.

Most birds and mammals observed in or near the project area are associated with the Columbia River and its shoreline. The riparian vegetation along the shoreline provides habitat for a wide variety of birds, mammals, reptiles, and amphibians. Existing wildlife habitat along the trail alignment is of low value due to the existing agricultural use and the general lack of native vegetation.

Construction of the trail would cause temporary disturbance to wildlife using adjacent habitats. This disturbance will be from use of construction equipment and removal of vegetation. Public use of the trail will lead to minor impacts to wildlife utilizing habitat along the trail, particularly during the high-use period of May through September.

D. Development within the R-O district shall not disseminate dust, smoke, fumes, or obnoxious odors nor degrade air quality.

Development of the trail would not degrade air quality.

The project area is largely rural and agricultural in character. While some urban growth is occurring, as recognized in county planning documents, the air quality problems typically associated with suburbs and cities (emissions from traffic, industries, etc.) are not yet a major concern, and air quality is relatively good in the area except during burning season. The Washington Department of Ecology (1997) has identified no air quality violations within the Wenatchee area.

Local dust, vehicle, and heavy equipment emissions would be the primary sources of air emissions associated with construction of the trail. Additional emissions would result

from paving operations. It is not expected that dust generation would be sufficient to disturb residences, since construction would take place in mostly undeveloped areas. Nevertheless, as is becoming standard for construction projects, the contracting authority, be it WSPRC or another agency or organization, would include within construction contracts the requirement that contractors (1) use water to prevent visible dust plumes from leaving the immediate vicinity of the construction site (generally within 50 feet), and (2) remedy reasonable citizen complaints regarding air quality.

Following construction, no airborne emissions would be generated by the project.

E. No use in this district shall exceed the maximum environmental noise level established by DCC Chapter 8.04 or WAC 173-60.

During construction activities, noise generated from construction equipment such as bulldozers, pavers, backhoes, loaders, cranes, trucks, compressors, vibratory compactors, and generators will be temporary and intermittent. No blasting would be conducted. Maximum noise levels from construction equipment would range from 69 to 96 dBA at 50 feet. Construction noise can be generally expected during daylight hours only.

Once the trail is developed and open for public use, the only sounds would be human voices from trail users during daylight hours only.

F. The review authority may require a bond, cash deposit or other form of financial assurance pursuant to DCC Chapter 14.90. Financial assurance may be required for the duration of the activity on an annual basis prior to the scheduled use. Financial surety shall be provided.

Not applicable. All construction activity will take place on non-county right-of-way, through a state public works process.

G. The review authority may require that the applicant(s) have personal injury liability insurance in a form and an amount acceptable to the prosecuting attorney. (Ord. TLS 97-10-71B Exh. F (part))

Not applicable. All construction activity will take place on non-county right-of-way, through a state public works process. The contractor will be required to have bodily injury liability insurance, per General Conditions of the construction contract. A performance and warranty bond for 100% of the contract amount will be furnished by the contractor to the state for all work covered by the contract, including site restoration.

3.1.6 Chapter 18.56 C-TR PLANNED TOURIST RECREATIONAL COMMERCIAL DISTRICT

18.56.15 Site Plan Development

A site plan development (SPD) permit application shall be filed and approved pursuant to the provisions set forth in DCC Chapter 18.64 and other applicable provisions of the DCC, prior to the issuance of a building permit or commencement of a business or commercial activity in this district. (Ord. TLS 97-10-71B Exh. F (part))

Memorandum

Date: September 29, 2006
To: Mark Gillespie, Washington State Parks and Recreation Commission
From: Jonathan Ives, Jones & Stokes
cc: file
Subject: Rocky Reach Trail – Rebuttal Information to Recreation Overlay Hearing Testimony

Introduction

This memorandum includes rebuttal responses to topical issues and comments presented for the record and at the September 12, 2006 Public Hearing for the Rocky Reach Trail Overlay and Site Plan Development Permit Application (RO-06-01 and SPD-0602). The responses include information from previous analysis of the issues, plus some additional information not previously part of the record. Documents of record of specific reference in this memorandum include:

- NEPA Environmental Assessment (April 2001) presented as Appendix E to the Rocky Reach Trail Overlay and Site Plan Development Permit Application (RO-06-01 and SPD-0602);
- NEPA Finding of No Significant Impact (November 2001) presented as Appendix G to the Rocky Reach Trail Overlay and Site Plan Development Permit Application (RO-06-01 and SPD-0602);
- Transcript of Proceedings before the Shorelines Hearings Board (November 22 and 23, 2004), (SHB No. 04-002), C.F. and Betty McNeal, et al., vs. Douglas County, Washington; Washington State Department of Transportation; Washington State Parks and Recreation Commission (WSPRC); Public Utility District No. 1 of Chelan County. Mark Gillespie of Washington State Parks and Recreation Commission entered this transcript into the record for the September 12, 2006 public hearing (Attachment 1 to this memo); and
- Transcripts of the September 12, 2006 Douglas County Public Hearing for the Recreational Overlay and Site Development Plan Application for the Rocky Reach Trail (Attachment 2 to

this memo), and for select comments presented by Rowley & Klauser in letters to Douglas County Transportation and Land Services dated August 1, 2006 and to Curtis Lillquist of Douglas County Transportation and Land Services and Mark Gillespie of Washington State Parks and Recreation Commission dated September 20, 2006.

The issues identified in this memorandum and presented in the September 12th testimony have been identified and analyzed in State Park's environmental documents and applications, in Douglas County staff reports and findings, and in public testimony. Information from these documents is restated where appropriate, and new information added in this rebuttal.

Written and Oral Testimony

SEPA Compliance (Rowley & Klauser August 1, 2006 Letter to Douglas County)

In an August 1, 2006 letter to Douglas County, Attorneys Rowley & Klauser allege that SEPA compliance has not been completed.

Response: As documented in the March 2006 DCC Consolidated Permit Application, WSPRC is the lead SEPA agency for the Rocky Reach Trail project (DCC section 19.04.050). SEPA compliance for the trail project was completed in December 27, 2001 through the adoption of the National Environmental Policy Act (NEPA) Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared for the project by FHWA and WSDOT, and issuance of a SEPA Determination of Nonsignificance (DNS) (Appendix B to the DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington).

The EA was published and made available to the public on April 19, 2001 for a 30-day review and comment period ending May 18, 2001 (Appendix E to the DCC Consolidated Permit Application). A public hearing was held on May 2, 2001 (Appendix F to the DCC Consolidated Permit Application). A Finding of No Significant Impact (FONSI) was issued by WSDOT and FHWA in November 2001 (Appendix G).

For this application, WSPRC determined that the SEPA Determination of Nonsignificance and adopted environmental documents (NEPA EA, FONSI) adequately address the environmental impacts and define measures to minimize the impacts. There have been no significant changes to the proposal since WSPRC issued the DNS, and WSPRC is aware of no new information that would suggest that the proposal would have probable significant adverse environmental impacts.

Bees (John Tontz, p. 90; Blaine Smith, p. 93; Bruce Smith, p. 96);

Testimony was presented at the September 12th public hearing regarding conflicts of the trail with the commercial storage (yarding) of honeybee hives at two locations adjacent to the trail.

Response: The issue of bee hives was previously analyzed as part of the NEPA Environmental Assessment (see Appendix E, section 7.1.2 of the DCC Consolidated Permit Application for the

Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington) and in the NEPA Finding of No Significant Impact (see Appendix G, page 5-5 of the DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington).

In response to concerns raised by local beekeepers (Bruce Smith, Blaine Smith), State Parks' staff (Bill Fraser, Mark Gillespie) arranged a meeting with Bruce Smith (Telephone: 509/663-6546), on September 18, 2006. At this meeting, Mr. Smith indicated that bees were kept on site for an average of 6 weeks, roughly between April 1st to May 15th, depending on weather conditions. During that period, only the last 2 weeks were of concern to Mr. Smith. Those two weeks are the time when the bee hives are taken from their dispersed orchard locations and reassembled en masse into the make shift "bee yard" site. During that two-week period the number of assembled hives can number between 4,000 to 5,000 hives. These hives are ultimately reloaded on trucks for shipment to other locations. As a result of this concern, State Parks is willing to enter into a cooperative agreement with Mr. Smith to consider the temporary closure of the affected section of trail during the peak bee hive assembly periods during this last two-week period (14 calendar days). The exact time for this temporary closure would be determined in consultation and coordination with Mr. Smith. This mitigation measure would be in effect as long as the commercial bee yarding activities were considered a legal use in the underlying zoning district. If and when bee yarding ceased to be a viable activity on that site this agreement would be void.

Note: Based on review of ownership maps, aerial photographs of the project area and Figure 3a (Zoning Districts along the Proposed Rocky Reach Trail) of the March, 2006 application, hives "yarded" by the Smiths are located on land zoned Residential Low (R-L). Figure 1 (attached) shows the location of the hives in relation to the trail and the R-L zone.

Testimony during the September 12th public hearing also indicated a shortage of bees available for pollination, although no mention was made of the cause for the shortage. According to the National Geographic News website (http://news.nationalgeographic.com/news/2004/10/1005_041005_honeybees.html)

honeybee populations have declined for the following reasons:

"The honeybee decline, which is affecting domesticated and wild bee populations around the world, is mostly the result of diseases spread as a result of mites and other parasites as well as the spraying of crops with pesticides, scientists say.

Among the greatest problems is the varroa mite, a bloodsucking parasite that attacks young and adult honeybees. Attacked bees often have deformed wings and abdomens and a shortened life span.

"The varroa mite is also really effective at transmitting disease, particularly viruses," Frazier (Maryann Frazier, a senior extension associate in the department of entomology with Pennsylvania State University in State College) said. Left untreated, a varroa mite infestation can wipe out a bee colony within a few months.

Another major bee pest is the tracheal mite, which gets inside adult bees and clogs their breathing tubes, essentially suffocating the insects. The tracheal mites also impede the bees' ability to fly, making them useless as pollinators, entomologists report. According to Caron (Dewey Caron, an entomologist at the University of Delaware in Newark), both the varroa and tracheal mites lead to the death of the bees by puncturing holes in their bodies that serve as pathways for viruses. The viruses are what technically kill most of the bees, he said.

Decades of pesticide use has also taken its toll on honeybees, though farmers are beginning to refrain from pesticide applications while their crops are blooming. "People are definitely smarter than they used to be about how they apply pesticides," Kremen (Claire Kremen, conservation biologist at Princeton University, New Jersey) said." (National Geographic News, October 5, 2004).

Vandalism (John Tontz, p. 90; Dudek, p. 105; Larry Letts, p. 114)

Testimony was presented at the September 12th public hearing regarding concern for risk of vandalism and theft.

Response: In his testimony, John Tontz claimed that large-scale fruit theft had occurred from boaters entering properties from the Columbia River. No direct evidence was entered into the record to support this claim (e.g., police reports). In any case, any fruit thefts by boaters have no relationship to the proposed trail. The proposed trail would actually result in increased security through the use of gates, fencing, bollards and ranger patrols that are not currently present in the area. The issue of vandalism and theft was previously analyzed in the NEPA Finding of No Significant Impact (see Appendix G, Attachment 5-6 of the DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington).

In 2000, The King County Department of Construction and Facilities Management prepared a SEPA Environmental Impact Statement for the proposed East Lake Sammamish Trail (Parametrix, Inc. et al. 2000). The risk of vandalism and other crimes (i.e., Public Safety) was analyzed as part of the EIS, with information drawn from existing trails located in King County as well as from national trail studies. The following is information derived from pages 3-118 and 3-119 of that analysis:

"In 1995, the Conservation Fund and the Colorado State Parks State Trails Program conducted a series of surveys to determine the effect of three urban trails on crime (The Conservation Fund and Colorado State Parks, 1995). These trails were the Highline Canal Trail, the Weir Gulch Trail, and the Willow Creek Trail within the Metro-Denver area. These trails run through residential neighborhoods along natural waterways and also cross busy intersections and pass through commercial and retail areas. Telephone surveys of 14 residents adjacent to these trails were conducted regarding crime. This study, entitled The Effect of Greenways on Property Values and Public Safety (1995), found little negative effect on these trails from crime. None of the single-family homes adjacent to the trail attributed theft from their property to a trail user. One property owner (7 percent of sample) adjacent to the trail experienced vandalism; this

resident subsequently kept trail users off his/her property by adding lighting and fencing. When asked if the trail had increased the quality of life in their neighborhood, 71 percent of the 14 residents interviewed stated that they believed that their quality of life had increased compared to 7 percent who believed that the trail had decreased their quality of life. The remaining respondents felt the effect on quality of life was neutral or did not know. In addition to the surveys of residents along the trails, four police officers with knowledge and experience with these trails were interviewed. None of them recalled an incident where the trail was used to commit a crime. They indicated that criminals typically use a car rather than a bicycle or other forms of transportation, including walking. They also indicated that people did not tend to loiter on trails; parking lots and open areas were more common as gathering places. This study did not include sophisticated statistical analyses, but reported percentages of the total survey sample. Because of the small sample size, results should not be considered representative of all adjacent homeowners.

In January 1998, The Rails-to-Trails Conservancy published Rail-Trails and Safe Communities, The Experience of 372 Trails (Tracy & Morris, 1998). This study summarizes the results of 372 completed surveys (out of 861 surveys sent out) that asked trail managers to report on personal or property crimes for the years of 1995 and 1996. This study concluded that crime on rail-trails is not a common occurrence and that the crime that does take place on rail-trails is not greater than, and is generally lower than, crime for other activity locations (e.g., parking lots/garages, homes, on the street). Major crimes, reported in terms of rates per 100,000 population, for rail trails were notably lower than the national rates for the same crimes." (Parametrix et al. 2000).

Once constructed, the Rocky Reach Trail will become a part of the Lincoln Rock State Park and therefore part of the patrol and enforcement for that park. WSPRC will be obligated to meet the conditions for trail security as defined in the conditions established by the Douglas County Hearing Examiner for approval of the shoreline substantial development permit (SP# 87, January 12, 2004). Those conditions have been included in Table 1 Environmental Commitments at the end of this memorandum. Additionally, a fully commissioned park ranger will patrol the Rocky Reach Trail on a routine basis and per the conditions defined in the Douglas County Shoreline Substantial Development Permit approval. See Table 1 at the end of this memo and Appendix I, Emergency Response Plan, of the DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington. Along with routine patrols by uniformed park rangers, use of the trail by the law-abiding public would serve to deter vandalism and/or theft by providing a level of informal surveillance for reporting illegal incidents to law enforcement personnel.

Additionally, existing pump houses and valves would be fenced to prevent tampering or vandalism.

Also, informational signs will warn trail users to stay on the trail. Boundary signs will also be placed at strategic locations along the trail and in response to landowner complaints.

Use of Helicopters (John Tontz, p. 91; Britt Dudek, p. 105; Shannon Huehn, p. 117; Jack Feil, p. 119)

Testimony was presented at the September 12, 2006 public hearing indicating that the trail would preclude the use of helicopters for aerial-spraying.

Response: Condition of Approval No. 10 for the Douglas County Shoreline Substantial Development Permit (SP# 87, January 12, 2004) requires the following: "From April 1 to June 30 of each year, trail use shall be limited to afternoon hours only and the proposed trail shall be closed during the morning hours. This provision may be altered only with the concurrence of the Washington State Tree Fruit Experiment Station and the Washington State University Agricultural Extension Service." (Please see Page 7 of the Notice of Action Taken by the Douglas County Hearing Examiner, January 12, 2004). With this condition in place, orchardists will have a large block of time during the morning hours in the three-month period, to conduct aerial spraying and moisture removal on orchards along the trail.

The opinion that the trail would preclude the use of helicopters for aerial-spraying is not shared by all helicopter companies. In discussion with Dan Farmer, Chief Pilot for Falcon West Helicopters (telephone: 509/663-2080), he believed that aerial application to orchards along the trail would not need to be treated any differently than applications adjacent to residential and public use areas that currently occur elsewhere in the Valley. He could see no reason why helicopters could not continue to provide aerial spraying, fertilizing, and drying services to orchards along the trail, and that the proposed morning closure period for the trail would coincide with the timeframe preferred for aerial application since winds typically increase after noon (Farmer pers.comm, September 27, 2006).

Protection of Agricultural Lands (Britt Dudek, p. 98; Rowley & Klauser August 1, 2006 letter)

Testimony was presented at the September 12th public hearing that the proposed trail project does not adequately address the impacts on the farming community, that the Growth Management Act (GMA) considers agricultural lands of long term commercial significance, and that non-agricultural facilities should be located away from these unique lands.

Response: The requirements of Washington GMA are reflected in the Douglas County comprehensive plan, urban growth boundary designations, implementing code (development regulations), and zoning. The Rocky Reach Trail is also designated in the Greater East Wenatchee Area Comprehensive Plan and Shoreline Design Plan. During the comprehensive plan development process, a variety of issues are typically addressed, including designating land uses and evaluating what facilities, infrastructure and range of activities may be compatible within designations.

This application, when combined with the conditions set forth by the Douglas County Hearing Examiner for the shorelines substantial development permit and the recommendation on page 14 of the September 1, 2006 Douglas County Staff Report demonstrate the proposal's consistency with the Greater Wenatchee Comprehensive Plan and adopted development regulations. It is

important to note that the proposed trail will, in its entirety, be located on public lands within the WSDOT-owned right-of-way, on Chelan PUD lands, and on Chelan PUD lands where WSDOT has use rights. Current use of the WSDOT right-of-way and Chelan PUD lands for agriculture is allowed only through year-by-year leases with adjacent landowners; most have a 30-day termination clause.

The "mandatory 'conservation' and enhancement requirements of RCW 36.70A.060" that Rowley & Klauser refer to (see pg. 7 of their Aug. 1, 2006 letter) apply to local governments' comprehensive plans and development regulations; not to site-specific permit applications. See RCW 36.70A.060. At issue in the King County case cited Rowley & Klauser was whether the amendments to the county's comprehensive plan and zoning code complied with the Growth Management Act (GMA). *King County v. Central Puget Sound Growth Management Hearings Bd., et al.*, 142 Wn.2d 543, 545 (2000). Similarly, *City of Walla Walla et al. v. Walla Walla County*, another case cited by Rowley & Klauser, dealt with county development regulations, not a site-specific permit. EWGMHB No. 02-1-0012c (2002).

In contrast, State Parks' application for a Recreational Overlay is consistent with Douglas County's existing development regulations and comprehensive plan and is therefore distinguishable from the *King County* and *Walla Walla* cases. If the opponents of the trail have an issue with Douglas County's development regulations and/or comprehensive plan, the time has long passed for any appeal.

Moreover, the GMA's requirements for development regulations exempt uses legally existing on any parcel prior to the county's adoption of regulations for conservation of resource lands. RCW 36.70A.060(1)(a). The proposed trail will be built on WSDOT owned right of way, on Chelan County PUD lands, and on PUD lands in which WSDOT controls the use rights. WSDOT acquired the right of way for the proposed trail in the 1950's, long before adoption of Douglas County's development regulations for conservation of agricultural resource lands and long before adoption of the 1990 Growth Management Act.

In a decision on a related LUPA appeal filed in Douglas County Superior Court in 2004, Judge Hotchkiss affirmed that while the proposed trail has significant recreation uses, it is also a transportation facility. See Decision on LUPA Appeal at 2, lines 17-20, dated August 2, 2005. WSDOT leases (Attachment 3 to this memo) with orchardists along the WSDOT right of way reflect the interim use of the lands for agricultural use. Many of these leases, which provide that WSDOT may terminate the lease with thirty (30) days notice, pre-date Douglas County's adoption of development regulations for conservation of agricultural resource lands. See attached (Rental Agreements). Thus, the proposed multi-modal transportation facility was a legally existing use prior to adoption of Douglas County's development regulations for agricultural resource lands required by the GMA and is not subject to the Act's mandatory conservation and enhancement requirements. Additionally, approximately 1 mile of the proposed trail on Chelan PUD No. 1 Lands is a part of a Settlement Agreement (Attachment 4 to this memo) for the federal relicensing of the Rocky Reach Dam. The Settlement Agreement has been executed by

all parties and is expected to be approved by FERC as part of the new federal license for operation of the dam.

With regards to alternatives to site the trail away from agricultural lands... The proposed Rocky Reach Trail is designed to utilize existing publicly owned lands; however, in order to minimize impacts to adjacent landowners that have orchards on both sides of the WSDOT corridor, WSPRC considered locating some sections of the trail closer to the Columbia River. These alternative routes would have involved acquiring some lands in private ownership and would have also impacted county-designated critical areas. WSPRC contacted affected landowners to discuss the potential for acquiring land necessary for these alternative routes. No landowner was willing to sell or grant an easement for the additional lands required, so further consideration of these alternative routes was abandoned.

Consideration was also given to locating the trail along Highway 2/97. However, this alternative does not meet the project purpose and need to provide a multi-modal transportation alternative to Highway 2/97 and to increase recreational opportunities along the Columbia River within the greater Wenatchee and East Wenatchee communities. Also, as established in the Douglas County Shoreline Master Program and Shoreline Design Area plans, there is a public need for access to shoreline areas in the county.

No Assurance From Parks to Meet Commitments (Britt Dudek, p.102)

Testimony was presented at the September 12th public hearing that the proposed trail project is missing assurances to manage and police during proposed closure time of the trail.

Response: WSPRC is obligated to meet the conditions set forth in the Douglas County Shoreline Substantial Development Permit approval (January 12, 2004, page 8, Condition No. 12). WSPRC personnel and representatives have provided testimony under oath, that WSPRC would meet the conditions for approval. Additionally, a fully commissioned park ranger will patrol the Rocky Reach Trail on a routine basis and per the conditions defined in the Douglas County Shoreline Substantial Development Permit approval. Please see Table 1 at the end of this memo and Appendix I, Emergency Response Plan, of the DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington.

Liability Insurance Coverage (Britt Dudek, p.104-105)

Testimony was presented at the September 12th public hearing that hesitance of Insurance Providers to Insure Growers.

Response: There is no evidence to support this assertion.

Spraying and Liability (Larry Letts, p. 114; Shannon Huehn, p. 117;

Testimony was presented at the September 12th public hearing regarding the risk associated with spraying adjacent to trail.

Response: This issue was previously analyzed in previous environmental documentation and testimony. Please refer to Page 5-2 of Appendix G Finding of No Significant Impact, DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington. Douglas County Code defines the buffer requirements to separate agricultural and non-agricultural lands. The proposed buffers are based on Douglas County Code Performance Standards 18.46.080B. The county has applied these regulations in several situations, including those where recreational properties have been placed next to orchards (Miller Recreation Overlay, RZ #01-01). The project has no special circumstances that would override the established buffering requirements of Douglas County. Increasing public presence near active orchards brings with it an increase in risk of conflicts between orchardists and other people, including the risk that someone might sue an orchardist for alleged damages sustained by drifting chemical sprays.

Table 1 at the end of this memorandum, presents the environmental commitments by WSPRC to minimize conflicts with the agricultural operations. Signs would be placed to inform visitors about normal farming practices, including the application of pesticides. Signs would also inform trail users of appropriate precautions they should take. Likewise, orchardists can take precautions to ensure that they have reasonably met their legal obligation to avoid spray drift during aerial and land-based applications.

While fear of lawsuits is an understandable concern, the actual risks of such actions are not sufficient to categorically exclude recreational uses in or near farmland. People and agriculture have coexisted throughout the Wenatchee Valley for a long time, and as the population continues to increase, so does the need to work out solutions to potential conflicts. (Please refer to Page 5-2 of Appendix G Finding of No Significant Impact, DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington).

In addition, Condition of Approval No. 10 for the Douglas County Shoreline Substantial Development Permit requires closure of the trail during morning hours from April 1 to June 30 of each year (see January 12, 2004 Hearing Examiner Notice of Action Taken for SP# 87, page 7, Condition No. 10). This condition will allow orchardists to conduct spraying when the trail is not in use.

Financial Impact of Losing Orchards (Larry Letts, p. 114; Shannon Huehn, p. 116)

Testimony was presented at the September 12th public hearing that the trail would cause financial losses to local orchardists and would hurt the local economy.

Response: The loss of orchard would occur on WSDOT and Chelan PUD land. . The trees that would be removed are being grown on public land that is leased to orchardists on a year-to-year basis. Because this land is publicly owned, the loss of orchard must be weighed against the public benefits the proposed trail would provide.

Several years ago, Douglas County had to weigh similar considerations when a landowner requested a Recreational-Overlay to construct an 18-hole golf course on prime and unique farmlands (Miller Recreation Overlay, RZ#01-01). In describing the considerations, the Staff Report prepared for the Hearing Examiner stated the following:

"On the one hand, the lands that are being proposed for conversion are prime agricultural lands...On another hand, the community is facing a depressing agricultural economy, which in turn will reflect on the future economy of Douglas County and the Wenatchee Valley. To remain a viable community, recreation and tourism has always been looked at as a viable commodity".

The Hearing Examiner ultimately ruled that the golf course could be developed with conditions (Miller Recreation Overlay, RZ#01-01).

Another consideration regarding the trail is the amount of orchard that would be lost. Based on the Douglas County case mentioned above, the amount of farmland that would be lost was judged not to be significant, and that the loss of 161 acres of prime agricultural land to a golf course was below the threshold of significance under SEPA. By comparison, the proposed trail would remove 24 acres of active orchard.

While economic benefits are not part of the purpose and need for the trail, the presence of the trail will support tourism in the area. The primary benefits of the trail focus more around the quality of life in the greater Wenatchee area. While increasing the quality of life may contribute to people's decisions to live in the area and promote healthier lifestyles, the economic effects of such changes are indirect and are not a major consideration regarding the trail. (Please refer to Page 5-3 of Appendix G Finding of No Significant Impact, DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington).

Frost Pockets (Shannon Huehn, p. 117; Jack Feil, p.121;

Testimony was presented at the September 12th public hearing that the trail and proposed vegetated buffers would create frost pockets, potentially causing fruit loss.

Response: This issue had been previously addressed in the NEPA EA and FONSI. (Please refer to Attachment 5-4 of Appendix G Finding of No Significant Impact, DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington). The following is an abbreviated version of the previous analysis.

Approximately 2,400 feet (approximately 9% of the trail length) of vegetated buffer would be required along the trail. Barriers such as trees, hedges, and buildings can cause frost pockets. Sometimes these can be modified or removed with good results

Trail design has included a number of factors that will help ameliorate the likelihood of frost pocket formation along the trail.

Trail grading: The Rocky Reach Trail designer has analyzed the profile, topography, and grading for the proposed trail. The grade, or profile, of the trail is designed to following existing topography as closely as possible in order to minimize earthwork. This approach has resulted in very few locations where the new trail elevation exceeds the existing (uphill) grades by more than a foot or two, and none in any areas where neighboring orchards would be affected by cold air pockets.

Orchard roads and drainage ditch: The trail will intersect existing orchard roads and one drainage ditch at several locations along the buffer length. To allow for movement of farm equipment, no buffer plantings will occur at these road crossings, nor will buffer plantings cross the ditch. These openings in the buffer will allow for cold air in those locations to move down slope to the river.

Planting buffers: County regulations require buffer planting in areas where the trail is closer than 100 feet to the adjacent orchard(s). This buffer planting would occur in only one area, from approximately Sta 49+70 to Sta 73+40 (2,400 linear feet), and between the trail and the river. The buffer and closest orchards are to the west and down slope of the trail, and approximately 110 feet from the closest orchards to the east.

Plant materials have been selected that are tolerant of the climate and will be a mix of deciduous and evergreen trees and deciduous shrubs. At the suggestion of a Washington State University College of Agriculture horticulturist (Curry pers. comm.), the buffer will include a deciduous shrub layer from the ground surface to approximately four feet to allow cold air near the ground to move through the buffer down slope to the river. In later years, pruning of the lower branches on the evergreen trees can be used to ensure that openings are maintained near the ground.

Because of the site-specific nature of frost pocket formation and the location of orchard trees along the 2,400 feet scheduled for buffer planting, an "on-the-ground" analysis will be conducted by WSPRC working with a horticulturalist, the orchardists and the trail designer to identify the areas (based on topography, building locations and other factors) of greatest potential for frost pockets. For example, there may be locations (in addition to the orchard roads and ditch previously mentioned) where openings in the buffer could be allowed that would not affect the effectiveness to intercept spray drift, but would provide a pathway for cold air drainage. This on-the-ground approach would ensure that the buffer is established to avoid the creation of frost pockets while achieving the buffering requirement as set forth in DCC 18.46.080B.

Please note that based on review of ownership maps, aerial photographs of the project area and Figure 3a (Zoning Districts along the Proposed Rocky Reach Trail) of the March, 2006 application, approximately 700 linear feet of the enhanced 60-foot vegetated buffer would occur on land zoned Residential Low (R-L).

Environmental Commitments

Table 1 presents the environmental commitments that WSPRC has pledged to implement as part of the Rocky Reach Trail project. These commitments address the potential impacts that were

previously identified and analyzed in the NEPA EA and FONSI (Appendices E and G of the DCC Consolidated Permit Application for the Proposed Rocky Reach Trail – Recreational Overlay District and Site Plan Development, Douglas County, Washington, and the conditions established for approval of the shoreline substantial development permit.

Table 1. Environmental Commitments

Impact	Mitigation/Environmental Commitment
Potential risks to public safety	<ul style="list-style-type: none"> ▪ A 100-foot wide buffer zone would be established between the trail edge and croplands, per DCC 18.46.080. ▪ Where less than a 100-foot buffer width is available (approx. 2,400 l.f. of the entire 5.1-mile trail length), trees, shrubs, or other screening would be provided; as specified within an Enhanced Alternative Buffering Method (Landscape Plan) approved by Douglas County, per DCC 18.46.080. ▪ Education of both the public and orchardists would increase awareness of appropriate precautions. Signs would be placed to inform visitors about normal farming practices, including the application of pesticides. <i>Signs with warnings set forth in Exhibit 1 of the Shoreline County Hearing Examiner decision (January 12, 2004) are to be posted at all designated access points ((Shorelines Condition No. 14).*</i>
Potential interference with farming activities due to proximity of trail and trail access	<ul style="list-style-type: none"> ▪ Interpretive signs would inform visitors of noise, machinery, and normal farming practices, including the application of pesticides. ▪ Where farming would continue on both sides of the trail, fencing would be placed on both sides, if requested by the affected orchardist. In such cases, access for farming equipment would be provided by using swing gates that would close off the trail while farming equipment crosses. Additional setbacks between fencing and orchard trees would be provided on a case-by-case basis, as necessary to allow for machinery turnarounds. ▪ <i>WSPRC will designate and enforce specific times for the opening and closing of the proposed trail, and shall post specific trail opening and closure times at all designated access sites in daylight savings and standard times (Shorelines Condition Nos. 8 and 9).</i> ▪ <i>From April 1 through June 30 of each year, trail will be limited to afternoon hours only and the proposed trail shall be closed during morning hours (Shorelines Condition No. 10).</i> ▪ <i>Entrance gates shall be installed and maintained at all designated access points to the proposed trail (Shorelines Condition No. 11).</i> ▪ <i>WSPRC shall take all reasonable actions to ensure that the trail is vacant of users at the time of trail closure and that all gates are closed during all times that the trail is closed (Shorelines Condition Nos. 12 and 13)</i>

Impact	Mitigation/Environmental Commitment
Inconsistency with existing plans, policies and/or ordinances	<ul style="list-style-type: none"> An R-O would ensure consistency with Douglas County's Comprehensive Plan and Land Use Ordinances.
Loss of vegetated cover	<ul style="list-style-type: none"> Native shrubs, grasses, and forbs will be planted to replace native habitat impacted by construction of the trail.
Potential disturbance to bald eagles	<ul style="list-style-type: none"> No construction would be permitted from November 15 to March 15 without approval from the USFWS. Additional conservation recommendations of the USFWS would be followed, as noted in the BA.
Consistency with National Historic Preservation Act Section 106	<ul style="list-style-type: none"> Examination of any newly discovered sites would be performed by a qualified archaeologist during construction. Treatment Plans call for archaeological site [REDACTED] ** (the only National Register-eligible site) to be protected with sheathing (geotextile) and inert fill. This will allow the trail to be routed over the archaeological site without disturbing the intact deposits. Indirect impacts such as vandalism should be minimized by this encapsulation of the archaeological site deposits and through the installation of protective fencing along the edge of the trail as it crosses the site. Additional protective measures include development of a vegetative cover to mask visible archaeological sediments at the site [REDACTED] **: monitoring during construction; and implementation of treatment protocols for unanticipated discoveries during construction including a Burial Treatment Plan.
Compliance with Section 404 of Clean Water Act	<ul style="list-style-type: none"> Standard design practices would avoid stream impacts, including bank stabilization, erosion control fencing, revegetation, and provision of adequate flow.
Protection of water quality	<ul style="list-style-type: none"> Erosion control fencing and other standard measures would reduce erosion, per the Temporary Erosion and Sediment Control Plan. A geotechnician and/or project engineer will conduct a walk-through following clearing and grubbing to identify supplemental measures needed to control erosion and other impacts.
Potential impacts on vegetation, fish, and wildlife	<ul style="list-style-type: none"> Native vegetation, as appropriate, will be planted following construction to minimize habitat loss. Vegetation clearing would be generally avoided between April and July in order to avoid nesting birds. If avoidance is not possible, then appropriate conservation measures would be employed in consultation with WDFW. A fencing plan will be submitted for review and approval by Douglas County and WDFW to address the Cottonwood Stands and Cox's Pond environmentally sensitive areas (Shorelines Condition No. 5).

Impact	Mitigation/Environmental Commitment
Potential spread of noxious weeds	<ul style="list-style-type: none"> A Noxious Weed Control Plan would be prepared and implemented in consultation with the Douglas County Noxious Weed Control Board. <i>The plan is to be reviewed and approved by Douglas County Department of Transportation and Land Services with recommendations from WSU Agricultural Extension and NRCS (Shorelines Condition No. 6).</i>
Erosion, topography, seismic, and stormwater runoff concerns	<ul style="list-style-type: none"> Construction would be set back at least 10 feet from steep banks to avoid erosion, topography change, and runoff. The trail would be constructed with geotextile fabric and pavement over the existing sand dunes to minimize disturbance to this feature. Native soils would be over-excavated and stockpiled for revegetation purposes. Improvements would be designed to resist earthquake damage, per applicable codes. Periodic slope inspection and correction of significant erosion problems would occur. To control surface runoff and minimize erosion, Best Management Practices (as specified in the Temporary Erosion and Sediment Control Plan) would be employed during grading operations.

Notes: *Conditions of approval of the Shoreline Substantial Development Permit (January 12, 2004) are shown in italics.

**Sensitive information has been blacked out in Table 1 to protect the location of archaeological resources on the trail route.

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The Conservation Fund and Colorado State Parks. 1995. The Effect of Greenways on Property Values and Public Safety. A Joint Study by the Conservation Fund and Colorado State Parks, State Trails Program. Denver, Colorado. November 1995.

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DOUGLAS COUNTY SUP CT

FAX No. 509 745 8430

P. 005/010

FILED

JUL 31 2007

JUANITA B. KOCH
DOUGLAS COUNTY CLERK
WATERNVILLE, WASH.

BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

JACK FEIL and DELAPHINE FEIL,
husband and wife, et. al.,
Plaintiffs,

No. 06-2-00410-5

vs.

DOUGLAS COUNTY, WASHINGTON
STATE DEPARTMENT OF
TRANSPORTATION, et. al.,
Defendants.

DECISION OF THE COURT

Washington State Parks and Recreation Commission submitted an application for a recreational overlay on property from the Odabashion Bridge just outside of the city limits of East Wenatchee to Lincoln Rock Park, a distance of approximately five miles. The purpose of the recreational overlay is to create a trail that links an existing trail from as far south as Hydro Park in Douglas County to the Odabashion Bridge, with Lincoln Rock State Park. The proposed trail will be located on property owned by the Department of Transportation and the Chelan County Public Utility District, which is adjacent to the Columbia River. The trail from Odabashion Bridge to Lincoln Rock Park would run through property zoned by Douglas.

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Page 1

EXHIBIT "A"
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Superior Court of the State of Washington
For Douglas County
John Hetchkins, Judge
P.O. Box 488
Wenatchee, WA 98808-0488
(509) 745-9063 184-9430

JUL-31-2007 TUE 08:46 AM

DOUGLAS COUNTY SUP CT

FAX No. 509 745 8430

P.008/010

County as tourist recreational, low residential, commercial agricultural 5 and commercial agricultural 10.

This LUPA appeal is from the decision of a Douglas County Hearing Examiner approving the recreational overlay. The Petitioners consist of individuals residing in the agricultural 5 and agricultural 10 zone, areas of agricultural resource lands of long-term commercial significance, as designated by Douglas County. The appeal raises several issues, the first of which is whether or not the recreational overlay is a rezone or is more akin to a permit. If the recreational overlay is a rezone, the decision must be made by the County Commission as opposed to a Hearing Examiner.

Although it is clear that Douglas County has delegated the authority to impose a recreational overlay to a Hearing Examiner, the question is whether or not Douglas County has the authority to delegate this decision. The Petitioners argue that a recreational overlay is like the planned unit development "floating zone," which was found to be a rezone in *Lutz v. Longview*, 83 Wn.2d 566 (1974). If the creation of a recreational overlay is a rezone, the *Lutz* Court held that the County Commission does not have authority to delegate the decision to rezone to a Hearing Examiner. The Respondents suggest that *Lutz* does not control as the recreational overlay is more akin to a permit than it is to a floating zone. As support, the Respondents rely on *Helthaus v. Planning & Zoning Commission of the Town of Greenwich*, 779 A.2d 750 (2001).

The recreational overlay is designated as a zoning district by the Douglas County Code, DCC 18.12.020. The recreational overlay district is found in DCC Chapter 18.46. The

DECISION OF THE COURT
Page 2

Superior Court of the State of Washington
For Douglas County
John Hotchkiss, Judge

P.O. Box 486
Washouli, WA 98158-0486
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EXHIBIT "A"

206

JUL-31-2007 TUE 08:46 AM

DOUGLAS COUNTY SUP CT

FAX No. 509 745 8430

P. 007/010

chapter provides that, "The recreational overlay district is permitted within all districts enumerated within this title, except where specifically prohibited within the code." A recreational overlay is not specifically prohibited in a commercial agriculture 5 district, DCC 18.34, or a commercial agriculture 10 district, DCC 18.36.

Uses permitted within the recreational overlay district are enumerated in DCC 18.46.040, which include water dependent facilities, public and private parks outside of an urban growth area, golf courses, ball fields and courts, shooting ranges, recreational vehicle parks and campgrounds, outdoor commercial facilities and activities charging an admission fee for participants or spectators, such as motorized vehicle racetracks or horse racing, outdoor music festival, outdoor events or festivals or group camps, sports rallies and club organizations, recreational trail systems and other similar uses. DCC 18.46.070 and DCC 18.46.080 provide for development standards and performance standards for the recreational overlay district.

This Court does not believe that the legal parameters of this matter are limited to the creation of a trail on public property for the use and benefit of the general public. Should this Court determine that the Hearing Examiner can not only conduct the hearing, but also make the decision to create the recreational overlay in this case, the Court must also determine that the Hearing Examiner is authorized to conduct a hearing and allow each of these landowners to change the use of their agricultural land to such things as golf courses, campgrounds and the like, all without the review and specific approval of the Douglas County Commission, or review of the Growth Management Hearings Board. Although this trail will be located on

DECISION OF THE COURT
Page 3

EXHIBIT "A"

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Superior Court of the State of Washington
For Douglas County
John Hotchkiss, Judge
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(509) 743-9063 884-9638

JUL-31-2007 TUE 08:47 AM

DOUGLAS COUNTY SUP CT

FAX No. 509 745 8430

P. 008/010

1 public property, it is public property that has been zoned commercial agricultural 5 and
2 commercial agricultural 10 by Douglas County.

3 The Court in *Lutz v. Longview, supra*, defined a planned unit development as a zoning
4 instrument that achieves flexibility by permitting specific modifications of the customary
5 zoning standards as applied to a particular parcel. The Court indicated that the planned unit
6 development is a flexible device often referred to as a floating zone. It hovers over the entire
7 municipality until subsequent action causes it to embrace an identified area. The Court
8 further held that the change in permitted uses in that case was obvious. The Court held that
9 the authorities are clear that such a change in permitted uses is a rezone or amendment of the
10 zoning ordinance. The Washington State Supreme Court relied on a decision of the
11 Connecticut Court in *Sheridan v. Planning Board of Stamford*, 266 A.2d 396 (1969) for this
12 position, along with a California case.

13 The Respondents suggest that a recreational overlay is different than the planned unit
14 development discussed in *Lutz*. The Respondents suggest that the *Sheridan* case relied on by
15 *Lutz* was distinguished by the Connecticut Supreme Court in *Heithaus v. Planning & Zoning*
16 *Commission of the Town of Greenwich, supra*, and this Court should follow that lead. In
17 *Heithaus* the landowner had requested an historic overlay, which was allowed by the zoning
18 code of the Town of Greenwich. The Supreme Court of Connecticut held that the
19 determination of the zoning commission was made in an administrative capacity, which was
20 appropriate. The Trial Court had reached its conclusion by comparing an historic overlay
21 zone to both a special permit and a floating zone. The Trial Court concluded that the historic
22 zone to both a special permit and a floating zone. The Trial Court concluded that the historic
23 zone to both a special permit and a floating zone. The Trial Court concluded that the historic
24 zone to both a special permit and a floating zone.

DECISION OF THE COURT
Page 4

Superior Court of the State of Washington
For Douglas County
John Heichkin, Judge
P.O. Box 481
Waterville, WA 98359-0481
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EXHIBIT "A"

4 of 5

JUL-31-2007 TUE 08:47 AM

DOUGLAS COUNTY SUP CT

FAX No. 509 745 8430

P. 009/010

1 overlay zone was more like a special permit than a floating zone. At footnote 7 the Trial
2 Court held that:

3 "If a landowner meets the conditions set forth for a special
4 exception, the [zoning commission] is bound to grant one, but in
5 the case of a floating zone, discretion is maintained and additional
6 limitations may be imposed. . . because [the zoning commission] is
7 acting legislatively."

8 In this particular case, the Court does not find that the Hearing Examiner is bound to
9 grant a recreational overlay if the conditions in the recreational overlay district are met. The
10 conditions are too vague, and particularly with the language that trails are to be discouraged in
11 the agricultural zones. The Court in *Heithaus* further indicated that an application for a
12 special permit seeks permission to vary the use of a particular piece of property from that for
13 which it is zoned, *without offending the uses permitted as of right in the particular zoning
14 district and area.*

15 The AC 5 zone and AC 10 zone zoning districts in the Douglas County code indicate
16 that trail systems should be discouraged. It is difficult for this Court to see how this
17 recreational overlay that allows a trail system to run through the AC 5 and AC 10 district for
18 recreational purposes is not an application for a use that would offend the uses permitted as of
19 right. The Court believes that *King County v. Central Puget Sound Growth Mgt. Hearings
20 Board*, 142 Wn.2d 543 (2000) and *Lewis County v. Central Puget Sound Growth Mgt.
21 Hearings Board*, 157 Wn.2d 488 (2006) specifically hold that these recreational uses offend
22 AC 5 and AC 10 zones, which are agricultural resource areas of long-term commercial
23 significance.
24

DECISION OF THE COURT
Page 5

EXHIBIT 'A'
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Superior Court of the State of Washington
For Douglas County
John Hotchkiss, Judge
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JUL-31-2007 TUE 08:47 AM

DOUGLAS COUNTY SUP CT

FAX No. 509 745 8430

P. 010/010

In addition, the Courts have held that actions of a city council are rezones when there are specific parties requesting a classification change for a specific tract. *Raynes v.*

Leavenworth, 118 Wn.2d 237 (1992); *Cathcart v. Snohomish County*, 96 Wn.2d 201 (1981).

The recreational overlay is clearly a specific party requesting that a specific piece of real property be treated in a particular manner.

This does not mean that the rezone in this area cannot occur, but it means that the decision must be made by the legislative authority of the county. The legislative authority of Douglas County may decide to review the zoning for the entire area. After all, if those who have made a determination that recreational use and agricultural use are compatible are wrong, the farmers are still subject to the restrictions of the agriculture zone. This Court is not suggesting this, or even indicating that a change is legally permissible; this Court is only suggesting that it is the County Commission that has this power, if anyone. Do not read into this that this Court has made a decision as to whether or not the rezone is appropriate because it has not. Under the circumstances, that issue is not before the Court.

As this is a legislative decision, the decision of the Hearing Examiner must be remanded to the County legislative authority for review and decision.

DATED this 31st day of July 2007.


JOHN HOTCHKISS
JUDGE OF THE SUPERIOR COURT

DECISION OF THE COURT
Page 6

EXHIBIT 'A'

Superior Court of the State of Washington
For Douglas County

John Hotchkiss, Judge

P.O. Box 438
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1 Douglas County.

2 Now, as you are aware from the previous
3 testimony by Bill Fraser, the planning and permitting of
4 this trail has gone on for a very long time, much longer
5 then any project that so clearly presents public
6 benefit. We were involved, as previously mentioned,
7 since 1995, 13 years when we started with the permitting
8 through the NEPA process and then, from there, all of
9 the applications that followed regarding the State
10 permit approvals and Douglas County approvals.

11 For the benefit of the Board, I'd like to
12 state the purpose of the project. It's interesting
13 that, in all of this process, we're once again
14 discussing a project which has so clearly shown a public
15 benefit. The vision of the trail north of the
16 Odabashian Bridge has long been a component of local
17 planning efforts. In fact, in 1988, Greater East
18 Wenatchee Comprehensive Plan clearly showed a future
19 trail in this location on its circulation map. The
20 project has had overwhelming public support as evidenced
21 in the past public testimony.

22 The purpose of the Rocky Reach Trail is to
23 provide a multi-modal transportation alternative to
24 Highway 2 and 97, to increase recreational opportunities
25 along the Columbia River within the Greater Wenatchee

1 discharging of firearms as another protection against
2 the birds. And most important of all, is the
3 application of pesticides by air-blast sprayers.

4 There are no alternatives to chemical pest
5 control. We, as responsible farmers and citizens, are
6 very sensitive to the problems of sprays drifting
7 off-target, especially onto areas where people gather
8 and will be present. It is impossible to prevent spray
9 from drifting off-target. Even those with the
10 Department of Agriculture have privately admitted that
11 spray drift cannot be contained on target.

12 The State and Federal governments recognize
13 these toxic chemicals pose a serious health risk. And
14 an insurance underwriter -- in my case, State Farm --
15 excludes bodily injury from spray drift. Spray drift is
16 not limited to visible, wet spray drift. There are also
17 fumes and vapors, and they are a part of the pesticide
18 that warns people when they're starting to get into an
19 area where it was sprayed. These ingredients that in
20 themselves can cause a serious reaction. They are very,
21 very stinky and stuff like that.

22 Also note that buffers today, say 200 feet,
23 may be adequate. When new toxicity findings or
24 introduction of new spray chemicals with a liberal
25 monetary awards in modern day lawsuits, such an event

1 landowner that purchases that land, could work with
2 Parks and the DOT. And we could have our land back, and
3 Parks could have the trail.

4 I thank you for your time.

5 MR. STANTON: Thank you. In the interest
6 of fairness, I believe we need to let Bob Parlette have
7 some time. We were going to limit public testimony to
8 probably two or three minutes because we have several
9 people that want to comment, but I think in fairness we
10 allowed Jack a good 15 minutes. So Bob, I'm going to
11 give you some time to make some statements.

12 MR. PARLETT: Thank you very much,
13 Commissioners. My name is Bob Parlette. My address is
14 661-15 Wheeler Hill Road. I happen also to be an
15 orchardist, and I have great sympathy for many of the
16 arguments that the farmers will make here tonight.

17 I must tell you that we took Jack Feil up
18 on his challenge. He said at one of our previous
19 meetings that only a few people support this trail. And
20 I have here what I would like to make part of the
21 record, a petition which reads: "We the undersigned are
22 users and staunch supporters of the Apple Capital Loop
23 Trail. It is a treasured public asset and should be
24 protected, maintained, and preserved at all costs. We
25 also urge the Douglas County Commissioners to allow the

1 you can't count on them blowing the same direction all
2 the time or being constant. So it's very difficult, and
3 we'll have the same trouble on the lower end. Thank
4 you.

5 MR. STANTON: Thank you. Okay. Eugene
6 Cupferman, Ryan Beauchamp, and Bruce Beyers, are they
7 here?

8 MR. CUPFERMAN: Good evening,
9 Commissioners. And thank you for holding this hearing
10 this evening. I appreciate it. My name is Eugene
11 Cupferman. I live at 6280 C Street in Wenatchee.

12 As a former apple grower, small orchardist,
13 I'm aware of spray drift problems. I've had my own
14 spray drift problems. We have to recognize that science
15 changes, and there's changes now in the kinds of
16 chemicals that we're using. In fact, us taxpayers have
17 given researchers over half a million dollars to help
18 convert from the more toxic pesticides that had been
19 used in the past to newer, safer pesticides.

20 Dr. Alan Falsat of Washington State
21 University has done extensive research on spray drift.
22 If a sprayer is adequately calibrated, there is far less
23 danger of spray drift than if it is the old sprayers
24 that we've been using in the past. So I'd like to
25 commend the people who have not had problems with spray

1 build this trail and protect private property rights.
2 The pieces are in place to do this, both legally and
3 practically. Now, we've had somewhat of a difference of
4 opinion. Parks tells us that all the legal and
5 procedural hurdles have been met. Mr. Klauser has
6 raised some questions that suggest perhaps not. These
7 are legal and procedural questions that you need to
8 consider very carefully, but I'm confident that they can
9 be resolved and that we can go forward.

10 I owned and operated a cherry orchard for
11 17 years. And the edge of a well-used county road was
12 12 feet away from my cherry trees. I never had any
13 problems with spray drift or any other issues associated
14 with the presence of that county road very close to my
15 orchard.

16 I believe the proposed 60- to 100-foot
17 buffers are more than adequate to protect the interests
18 of the adjacent orchardists. And if they're not, there
19 are additional measures that perhaps can be negotiated.
20 Parks offered some additional measures tonight that they
21 felt were necessary to address some of the issues that
22 have been concerned. If there are other issues that
23 need to be addressed, I think we can do that.

24 I only ask that you do the hard work and
25 take the necessary steps to allow this trail to go

1 liability policy. We write these all the time. We
2 write farm insurance policies. We know about spray
3 drift. It's not a big deal now.

4 As of 4:45 today I wasn't able to bring a
5 dollar quote, a ballpark idea of what this would cost.
6 But my guess is that, if we pass the hat among the folks
7 like me who want to see the trail built -- and put me
8 down for the first hundred bucks -- I don't think this
9 is a big deal. For three or four hundred dollars, I'm
10 covered for all the damage I can do with my car, which
11 is considerable.

12 And the folks that are so worried about the
13 possibility of a lawsuit for spray drift, I don't think
14 they can name one action filed in the State of
15 Washington by a passer-by, not a neighbor, not an
16 organic farmer who lives next to a non organic farmer,
17 but a passer-by on a bicycle or on foot who sued
18 successfully for spray drift.

19 So we're insuring something that I don't
20 think has happened in the State of Washington. Correct
21 me if I'm wrong, if you've got the facts, and I'll stand
22 corrected.

23 Well, you know, the funny thing is, when I
24 spoke to Bob Parlette last week -- the guy's smarter
25 than I am, I guess; and he's a jump ahead of me, cause

13. The proposal before the Board is a permit, or as interpreted by the Superior Court an amendment to the development regulations. Permits and amendments to development regulations are not comprehensive plan amendments and are not subject to the timing limitations of RCW 36.70A.130(2).
14. The environmental review, analysis and determination required by the State Environmental Policy Act (SEPA) has been completed by Parks as the lead agency having jurisdiction and has been reviewed and affirmed by the Shorelines Hearings Board in *McNeal, et al. vs. Douglas County, et al.*, No 04-002, and by the Douglas County Superior Court in *McNeal, et al., vs. Douglas County, et al.*, No. 04-2-00045-6 and *Feil, et al. vs. State of Washington, et al.*, No. 05-2-00121-3.
15. The Shorelines Hearings Board, in *McNeal, et al. vs. Douglas County, et al.*, No 04-002, issued its Findings of Fact, Conclusions of Law, Order, and Order on Reconsideration on March 4, 2005, holding that the proposed trail was consistent with the Shoreline Management Act and the County's Shoreline Master Program and that a Substantial Development Permit for the trail was proper.
16. The decision of the Shorelines Hearings Board was affirmed by the Douglas County Superior Court on September 13, 2005, in *Feil, et al. vs. State of Washington, et al.*, No. 05-2-00121-3.
17. On September 13, 2005, the Douglas County Superior Court in *McNeal, et al., vs. Douglas County, et al.*, No. 04-2-00045-6, held that no further review is necessary under SEPA unless changes are made to the trail project that would result in significant adverse environmental impacts.
18. The Eastern Washington Growth Management Hearings Board issued a decision on February 16, 2007, in *Feil, et al. vs. Douglas County, et al.*, Case No 06-1-0012, holding that the Recreation Overlay District designation granted to Parks for the Rocky Reach Trail was a site specific project permit application and rejected argument that the designation was a "rezone."
19. The decision of the Eastern Washington Growth Management Hearings Board was affirmed by the Douglas County Superior Court on July 31, 2007, in *Feil, et al. vs. Eastern Washington Growth Management Hearings Board, et al.*, No. 07-2-00100-7.
20. Parks has applied for a Recreation Overlay permit for the Rocky Reach Trail pursuant to an order of the Douglas County Superior Court that "Parks apply for and obtain Permits as may be required by the Douglas County Code" and, in the view of the Board and the Douglas County Land Services Director, a Recreational Overlay permit is not required under the Douglas County Code for this transportation facility.
21. The Board of County Commissioners, in spite of its disagreement with the characterization of Park's Recreational Overlay permit as a rezone, has reviewed the entire record of the proposed project, including decisions of the Shorelines Hearings Board, the Eastern Washington Growth Management Hearings Board, and the Douglas County Superior Court, has received written and oral comments from the applicant, the opponents of the project, and the general public, and has considered the proposed project in light of all the information received, the policies of the Greater East Wenatchee Area Comprehensive Plan, the County's